

1 UNITED STATES DISTRICT COURT

2 NORTHERN DISTRICT OF WEST VIRGINIA

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4 FRIEDRICHS HARRIS, Administrator of the Estate

5 of Evan M. Harris, deceased,

6 Plaintiff,

7 VS. CIVIL ACTION NO. 2:16-cv-46

8 Q&A ASSOCIATES, INC., et al.,

9 Defendants.

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11 Proceedings had in the evidentiary hearing of the
12 above-styled action on January 4, 2017, before Honorable John
13 Preston Bailey, Judge, at Wheeling, West Virginia.

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15 APPEARANCES:

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25 (Appearances continued on next page)

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1 (Proceedings in open court, January 4th, 2017, 10:02 a.m.)

2 THE COURT: I would ask the clerk to call the next
3 case.

4 THE CLERK: This is the case of Harris v. Q&A
5 Associates, Inc., et al. Civil Action 2:16-cv-46.

6 Will the parties please note their appearance for the
7 record.

8 MR. SIMS: Good morning, Your Honor. David Sims on
9 behalf of Cathy and Rick Harris, plaintiffs in this case.

10 MS. SAAD: Good morning, Your Honor. Lindsey Saad
11 for all the defendants. And here with me is Christopher Jones.

12 THE COURT: Who wants to go first?

13 MS. SAAD: Your Honor, I believe the party with the
14 burden should go first.

15 MR. SIMS: That's them.

16 THE COURT: Well, I gave that some thought. The
17 defendant has the burden of proving a valid arbitration clause.

18 MR. SIMS: Yes, sir.

19 THE COURT: However, this is a -- I believe it's a
20 diversity case, West Virginia has a presumption of mental
21 capacity. So I'll ask the defendants, do you intend to present
22 any evidence on your own today?

23 MS. SAAD: Yes, Your Honor, we do. However, Your
24 Honor, we do believe that it is the plaintiff's burden to prove
25 that the decedent lacked the mental capacity to enter into an

1 arbitration agreement.

2 THE COURT: Well, that's a decision I'll make.

3 Plaintiff, why don't you call your witnesses first.

4 MR. SIMS: Your Honor, I just had surgery on my foot.

5 THE COURT: You may remain seated.

6 MR. SIMS: Okay, thank you. Because I get wobbly
7 after a while.

8 Your Honor, my first witness would be Dr. Rick
9 Harris.

10 THE CLERK: Come up here, first. Please state and
11 spell your name for the record.

12 THE WITNESS: Rick Harris. R-i-c-k, H-a-r-r-i-s.

13 FRIEDRICHS HARRIS, PLAINTIFF, SWORN

14 DIRECT EXAMINATION

15 BY MR. SIMS:

16 Q. Good morning, Dr. Harris. Would you tell the Court your
17 full legal name and your current address?

18 A. Friedrichs H. Harris, Junior. First name is spelled
19 F-r-i-e-d-r-i-c-h-s. 3720 Edenborn, E-d-e-n-b-o-r-n, Avenue,
20 Metairie, Louisiana, M-e-t-a-i-r-i-e.

21 Q. And, Dr. Harris, you are the plaintiff in this case?

22 A. Yes.

23 Q. And you were duly appointed as the administrator of your
24 son's estate?

25 A. Yes.

FRIEDRICHS HARRIS - DIRECT

1 Q. And would you please tell the Court your occupation.

2 A. I'm a nephrologist. I take care of dialysis patients and
3 patients with chronic kidney disease.

4 Q. And where did you receive your medical training?

5 A. I did my medical training at Tulane. I did my internship
6 and residency there. I did my fellowship in nephrology at
7 UCLA.

8 Q. And we're here today because of the death of your son,
9 Evan Harris?

10 A. Correct.

11 Q. And if you would, tell the Court your son's legal name and
12 how it became that -- you became his parent or one of his
13 parents.

14 A. Evan Matthew Harris with one T -- two Ts, and we adopted
15 him at three days of age. We employed a legal firm that my
16 wife was friends with one of the lawyers there, and went
17 through some various testing. We were older than normal, I
18 think, for adoptive parents, wanted to prove we were committed
19 to the role. And we assumed care after three days.

20 Q. What information, if any, were you provided about Evan's
21 birth parents, biological parents?

22 A. Yes. Well, we -- they mentioned that she had used drugs
23 in the first trimester. The father had some legal problems as
24 well. She had another child and didn't feel like she could
25 take care of Evan any longer. She was going to nursing school

FRIEDRICHS HARRIS - DIRECT

1 is our understanding.

2 That's what we knew initially. We found out other things
3 later.

4 Q. What other things did you find out later?

5 A. That she died of suicide. At about three years later, we
6 found out about that.

7 Q. And what did you learn about his biological father?

8 A. He was in jail for assault or maybe with a deadly weapon,
9 or a screwdriver that became a deadly weapon.

10 Q. Please tell the Court what your son's condition was like
11 as a small child.

12 A. He seemed healthy. He did have a lot of problems with
13 colic. My wife was the main caregiver at that point. My
14 partner had just died and I was by myself, so it was -- it was
15 a tough few years when he first came home. Eventually I got
16 partners and was more involved in his care. But I do remember
17 late nights with him up rocking him because of colic, at least
18 for the first nine months.

19 Q. Please tell the Court, if you would, what medical issues,
20 if any, that Evan suffered from as a small child.

21 A. He had many. He had to wear head gear for orthodontic
22 problems. He had visual problems, he had nystagmus and had to
23 wear a patch over his eye. He had some asthma problems. Those
24 were the main things. Later on there were some other problems
25 that developed. But as a child, those were the things that I

FRIEDRICHS HARRIS - DIRECT

1 remember.

2 Q. When your son went to preschool, how did he do there?

3 A. Well, he was very enthusiastic, he seemed to do well.

4 There was some testing done even prekindergarten. And he
5 actually did prekindergarten two years because they didn't feel
6 like he was mature enough to go on to kindergarten.

7 And so he was tested again before he went to kindergarten.
8 He passed those tests and he seemed to be assimilated into the
9 group and happy to go to school.

10 Q. And tell the Court, if you would, what his elementary
11 school days were like.

12 A. Well, they were tough. He went to a special school called
13 St. George's initially, and he was falling behind the other
14 students, he was frustrated. He had a hard time making
15 friends, connecting with the other students. We -- well, we
16 formally had him tested actually in pre-K -- going back,
17 sorry -- one of the pre-K teachers noticed that he was very
18 fidgety and suggested we go to a psychiatrist about his
19 problems. And it was a Dr. Sands who saw him when he was about
20 three and a half, four, and started him on medications for ADHD
21 at that time. So he was four. And he regularly saw Dr. Sands.

22 So that therapy continued. When he started falling behind
23 more in second grade, he was very frustrated and he had a
24 formal evaluation at Children's Hospital. And it was one of
25 the longest evaluations he had. And it showed that his

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1 intellectual function was poor, that he had emotional problems,
2 that his working memory was poor. He had a hard time planning
3 things in particular. He couldn't hold two things in his brain
4 at once, especially math and multiplying things in general.

5 So it turned out that we felt that St. George's wasn't a
6 good fit for him, that the children were much higher
7 functioning than he was, so we transferred him to another
8 school called Holy Rosary in third grade. And that also was a
9 special learning school. And he seemed to fit in with the
10 children there.

11 He still had socialization problems and the memory
12 problems and low intellect problems that continued with him.
13 But he did -- he was able to stay in school. He was respectful
14 of his teachers. He was more respectful to the teachers than I
15 think he was to us. That's just a common trait, I guess.

16 Anyway, he continued to go to Dr. Sands and received his
17 medications all the time. He continued the head gear therapy
18 and the eye therapy.

19 We noticed that his stature was small at that time, he was
20 about nine or ten years old. And he turned out to be growth
21 hormone deficient. He was started on growth hormone shots,
22 60,000 a year for that. He also had blood in his urine and had
23 a disease called IgA nephropathy. We took him to a pediatric
24 nephrologist for that. We could just watch that. I knew
25 exactly what that was, I was an adult nephrologist.

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1 Fortunately, he didn't develop any kidney failure or protein in
2 the urine or anything like that. So again, a lot of medical
3 problems to keep up with.

4 But his days at Holy Rosary were pretty good, I guess,
5 until after he started the growth hormone, he started to grow.
6 And that was the most effective drug that he ever received. He
7 was about three feet and a half, three feet nine inches when he
8 started the drug. And by the time he finished it when he was
9 17, he was five foot 10 or 11. But it was during this period
10 of puberty and there was all sorts of hormones going on. And
11 he became very agitated at home and aggressive at home. It was
12 a very difficult time.

13 Q. Besides Dr. Sands, did your son receive other mental
14 health treatment during his formative years?

15 A. Many different physicians. And he went to another
16 learning physician by the name of Dr. Perdigao, he was a
17 psychiatrist also. Tried behavioral therapy. And he was -- he
18 was the first one who brought up bipolar. He said that at that
19 young in age, I guess he was six, something like that, and he
20 had -- usually they don't like to give that diagnosis, but he
21 obviously was different. He would purposely ignore the
22 commands of a person who was over six feet and he was about
23 three feet. And he would purposely aggravate them. I mean,
24 that's -- and he just hadn't seen that before, the way -- a
25 stranger in the room with him, he would not listen to them.

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1 He also went through a program called Fast Forward with a
2 psychologist. It's a computer program that helped him
3 understand things, but hopefully to train his brain a little
4 bit more. After we got those results from Children's Hospital,
5 we were looking for anything we could do to improve his brain
6 function.

7 There were other -- there were other psychologists he
8 went to. One was a behavior therapist. I read this book after
9 he got so aggressive at home. It was mainly anger, anger or
10 hard to understand reasons why, why he would get angry. He
11 would get mad at people. If he would fall, say, at the
12 playground, he would get mad at somebody who was on the
13 playground saying why did you make me fall, things like that.

14 So he went to a -- the book I read was by a guy named
15 Green and it was about handling anger in these patients, and a
16 lot of different ways you can get to anger in children. Manic
17 depression is one of them, being bipolar is one of them.

18 So he put everything into one basket as far as what
19 you would get into an argument with him about. I mean, we
20 had -- we had several fistfights and several police events,
21 them coming to the house and so on. But after reading this
22 book and focusing things, I understood that Evan could not come
23 up with a plan. He could not deal with his own anger. It was
24 up to us as his parents to come up with a plan to help diffuse
25 any anger that developed.

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1 He had the most insatiable need for things that you
2 could imagine. It wasn't just a want, it was an intractable
3 insatiable need. He needed to have everything he saw. And he
4 would go through this cycle where you would -- where you would
5 tell him no and explain everything about why he couldn't have
6 it. And after a half an hour of this, he would get back to the
7 same question, can I have this? It would just come right back
8 to the same question. And it was very hard to divert him once
9 he wanted something. It would be two hours of arguments about
10 calming things down.

11 Anyway, so also -- so this psychologist we went to
12 was a proponent of Dr. Green's methods, and we went several
13 times to see her. She did what she could.

14 There was also another psychologist who used electric
15 wave therapy, slow electrical impulses, she would measure the
16 EEG. And I read a little bit about it, seemed to be effective
17 in some cases. And so we went to her a few times and she was
18 really concerned about the EEG that she saw. He didn't -- he
19 didn't have any lesions. You know, we worked him up for things
20 that might cause his rage symptoms, like temporal lobe
21 epilepsy. He didn't have that. He didn't have a brain mass or
22 anything like that. It was just these rage spells would occur
23 sporadically. That therapy didn't seem to help much so we
24 stopped it after several sessions.

25 He had speech therapy. His mouth, his tongue was a

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1 little bit big. He had to go to a speech therapist for a
2 while. So it was a full-time job growing up with him.

3 Q. Tell the Court, if you would, after his visits with
4 Dr. Perdigao, were there any hospitalizations for his mental
5 health issues?

6 A. The first hospitalization I thought was with River Oaks,
7 is that what -- no, I'm going to have to defer to my wife to --

8 Q. Okay.

9 A. -- remember those specifics. I remember we -- after a
10 while, we had a daughter who also had pervasive developmental
11 delays, about a year younger. And after a while, we became two
12 separate families where I was taking care of Evan and she was
13 taking care of the other child. That's in the future. I mean,
14 I can -- I'll let you ask the questions, I guess, get to that
15 point.

16 Q. What was your son hospitalized for? What --

17 A. Well, we had -- we had gotten in a fight. He had not
18 taken no. He couldn't take consequences. He was up on the
19 second floor. He started kicking out the spindles on the
20 second floor and then used one of the spindles to hit me. I --
21 we called the police. They came. He was put in River Oaks
22 psychiatric hospital for that particular spell.

23 There was another spell where, after he had been at River
24 Oaks, he learned how to cut himself. One of the other patients
25 there used -- I guess taught him or whatever. So a year

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1 later -- I guess the first River Oaks admission was in 2005,
2 when he was 13. Later, he started to cut himself one time
3 and -- well, even before that, he had -- he had -- you know, we
4 used time out as one of the therapies and he would destroy his
5 room. Make holes in the wall and try to escape by opening the
6 windows and holding onto the electrical lines is what he
7 thought was an escape.

8 Then he also climbed up on top of his desk and went
9 through the transom with his arm, got a cut on his arm that had
10 to be sutured. So we had to Evanize the house essentially. We
11 changed his room. We had to take out all of the glass and we
12 put a piece of -- we had a contractor put a piece of tin on his
13 door so he couldn't kick it down. It was locked from the
14 outside. So that was a safe spot to put him during those
15 periods of time when he was in a rage. So it was -- that was a
16 difficult time.

17 Q. Tell the Court, if you would, if you were able to teach
18 Evan things as a parent would to a child.

19 A. It was a real challenge. Like I said, he didn't have a
20 working memory. He couldn't plan things. So we had a ritual
21 of I would be cooking breakfast and I would try to teach him to
22 cook an egg, fry an egg. And he didn't seem to be able to
23 understand that concept.

24 And just the airport, you know, going to the airport.
25 Say, you know, show me where the gate is. Can you look at the

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1 directory and say where the gate is and then go to the gate.

2 That was out. There was nothing he could do with that.

3 And I took him fishing often, and that's one of the things
4 we enjoyed together. We went in the Caribbean, off the
5 Louisiana coast, freshwater bass fishing, Alaska, Hawaii, all
6 that. And he would -- he couldn't bait a hook and his line
7 would get tangled often. So you know, just the routine things,
8 he just couldn't pick up.

9 And you would think -- other people looking at this would
10 think, he's just doing that so that you will do it for him.
11 You know, that's what other people would think. But it's not
12 true. I mean, this is stuff he wanted to do and he couldn't do
13 it. He couldn't plan it. You would have to set everything out
14 for him so that he would progress.

15 I mean, he also liked to do pressure washing in the back
16 yard, to my wife's apprehension. I taught him how to use a --
17 it was a perfect setup. It was a perfect place where he could
18 do that. I had set everything up, get the machine going. All
19 he had to do when he finished the pressure washing, is he had
20 to turn it off. It would go off because it would run out of
21 gas, but he had to turn off the water. That's all he had to
22 do. And we would go in the back yard and we had a sport court
23 that he could pressure wash all day, whether it needed pressure
24 washing or not. He would do that. That was one of the major
25 ways I would reward him is for doing work in the back yard.

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1 That was so difficult, finding a place in between being
2 insulted all day and called names and finding a behavior you
3 could reward. So working in the back yard was one of his jobs
4 that I could reward him for.

5 Q. Did you have other work or make other work for your son?

6 A. Yeah. I mean, he couldn't find work on his own. I had
7 to -- after Katrina, there was a restoration project in
8 Lakeview, in the inner city. It was a place called Beacon of
9 Hope that was remediating all of the damage. He loved that.
10 He could go in and destroy everything that was in the house and
11 do -- that was a good thing, that he was destroying things.
12 And he got to meet -- it was incredible, the people that came
13 to New Orleans after Katrina to rebuild the city. Great kids
14 that he met from throughout the states, throughout the world
15 actually. He really couldn't interact with them very well. He
16 sort of stayed doing his gardening bit and weed whackers and
17 machetes and some painting inside. So that was a good job.
18 Actually, his, quote/unquote, volunteer work was actually paid
19 work by me. I would give him ten bucks an hour for doing that.

20 Q. What kind of volunteer work would he do?

21 A. Well, mainly the remediation stuff at Beacon of Hope, but
22 he also worked at a little grammar school by the name of
23 St. Dominic's, that I knew -- I went to school with the head
24 janitor there, that he was -- in fact, we had the same
25 birthday, so we celebrated our birthdays together.

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1 He would -- I would say -- well, during the summer they
2 needed to fix up the schools so he would go there. And I paid
3 him to volunteer there. And I mean this was all in teenage
4 years and so on. He liked doing that. And I also got him a
5 volunteer job at the hospital I work at. I couldn't get him a
6 regular job. He worked as a volunteer in the cafeteria and he
7 would get paid for that too. You know, this was one of the
8 last jobs he had in his 20s, 19, 20.

9 Q. What was Evan's ability to read like?

10 A. Well, I spent a lot of time with him on games, reading
11 things to him. We read all of Harry Potter. But his -- he did
12 know the words, but he would read through the punctuation. He
13 would just da, ta-da, ta-da, ta-da, very monotone, no emotion.
14 I don't think he understood what he was reading anyway. We
15 would take turns reading that. And he liked Harry Potter
16 because he had a movie, he had a guide.

17 When he played games at home, he had to have a guide. And
18 he would look at the pictures mainly to get him through the
19 game. He didn't really read the instructions so much. He was
20 off with the characters as soon as he got ahold of the
21 controller. Of course there were anger issues there. When
22 Evan couldn't get things to work, his solution was to push
23 things harder. So he ended up breaking a lot of electronics.
24 And we had to use insurance on any electronic product that we
25 got for him, I'm sure the companies lost money. But we would

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1 make him pay for these things too. It wasn't just like we
2 would replace them. He had to do certain things, working in
3 the yard, reading, whatever we could do to set up a plan for
4 him. Because he couldn't come up with a plan. He couldn't get
5 a job. He couldn't get -- I mean, he even broke his TV. He
6 threw something at it and broke it so we had to work out a
7 plan, how are you going to get this.

8 I mean, behavior therapy didn't work with him. He didn't
9 understand consequences. He wouldn't take consequences. It
10 was a struggle to get him to understand that his behavior was
11 aggravating me or Kathy or Emily or anybody. He didn't see it
12 as aggravating. He would ask me, are you aggravated at me? He
13 couldn't read my face or something, I don't know. If he did
14 find out if we were aggravated, he would say well, that's your
15 problem. So he didn't understand that his behavior was leading
16 to consequences.

17 And it really hit home when we sent him to this place
18 called Three Springs for eighth grade. He had been through
19 Holy Rosary, you know, until seventh grade. And there's a
20 whole story about him getting out of control and we couldn't
21 send him back there. So we had to send him to this place
22 called Three Springs, which was an outdoor wilderness center
23 where you had to earn your way into a warm environment. You
24 lived outside. You had a latrine. You had -- God, you know,
25 you had to make your own food. You had to clean your own

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1 dishes. This was almost -- this was worse than boot camp.

2 And after being there several months, the counselor, I
3 talked to him and he said Evan just doesn't get it. He doesn't
4 take consequences. He doesn't understand why he's getting
5 consequences. He thinks we're just being mean to him. He
6 doesn't see that his behavior results in somebody else's
7 behavior. It was beyond him.

8 Q. How did that end?

9 A. With Three Springs? Well, we -- again, it had its good
10 and bad points. Evan picked up the worst behavior. I mean, a
11 lot of these children that were there, young adults were there
12 were into drugs. They were very smart. Evan was not. So they
13 took advantage of him. They peed in his foot locker. He was
14 still kind of short, so they weren't nice to him all the time.
15 He was trying to make friends. He would try to throw the
16 football around with them. This was up in Tennessee. We
17 visited him every few weeks. Drove there and back to see him.
18 We would take turns going up.

19 So it ended in 2007. Yeah, May 2007. It started in
20 September 2006. So he was there for about nine months. And he
21 did, you know, make some progress there away from his
22 electronics, away from other distractions. I mean, he went to
23 school while he was there too. And there was one teacher he
24 really connected with and they seemed to help him read a little
25 bit better. And he seemed to be making some progress

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1 academically there.

2 Q. Where did he go after Three Springs?

3 A. He went to a place called Bachman Academy.

4 Q. And tell the Court, if you would, what Bachman Academy is
5 like.

6 A. Well, first off, we choose Bachman by using an education
7 consultant who gave us a list of places. And we interviewed
8 some of them and went there with Evan one time. It was a
9 vocational school that -- it was a boarding and day school for
10 sixth to 12th grade children. Evan would be in the freshman
11 year, the ninth grade. And they had two different tracks.
12 They only had about 50 children there. They had two tracks,
13 one was collegiate, one was vocational. Evan was in the
14 vocational track. And there was no foreign language or
15 anything like that. They took work math. They took courses
16 like woodworking, mechanics, equestrian, horticulture. It was
17 not high powered. They also had a class called school to work.
18 You know, music appreciation. Time with the teacher. It was
19 more almost social skills and trying to find out if he had any
20 skills to live independently. And he made some progress. He
21 was happy there, I think.

22 The biggest change, he was getting into trouble the first
23 two years, some suspensions. But the biggest change occurred
24 during the summer of 2009, when he started lithium. He started
25 to cut himself during the summer and ended up in River Oaks.

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1 And then he learned this cutting behavior, ended up in River
2 Oaks. And then he went to a place called Meridell. This was
3 after he had been -- these are residential treatment programs.

4 He had been to two residential treatment programs in Texas
5 before, 2005 -- summer of 2005, summer 2006. And this was the
6 summer of 2009 he went to Meridell and he started on lithium.
7 And that, for the first time, helped control his rage where it
8 wouldn't last for two hours. He would still get angry very
9 easily. And he still was frustrated by his lack of ability to
10 perform like other children intellectually, but it wouldn't go
11 on for hours. And I could divert him a little bit. And the
12 holes in the walls and the calls to the police and the broken
13 doors and the broken electronics calmed down.

14 Q. What was the drug lithium prescribed for?

15 A. Manic depression, bipolar syndrome.

16 Q. And did your son have any other mental health diagnoses at
17 this time, other than bipolar?

18 A. He had a long list. ADHD. Attachment disorder.
19 Positional defiant. I mean, the list -- it was hard to fit him
20 into one particular category. He had nine different. His
21 original psychiatrist, Mark Sands, by way of introduction to
22 the first residential treatment program he went in, listed nine
23 different things.

24 I don't know all the details about all the different
25 diagnoses, I just know what it was like to live with him.

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1 Q. Tell the Judge, if you would, what kinds of things your
2 son learned at Bachman Academy?

3 A. Well, he did have some friends there, you know, and that
4 was very important socialization. He had two friends that he
5 seemed to -- seemed to click with. But again, he would learn
6 woodwork, simple math. He couldn't do subtraction, he could do
7 a little bit of addition. Music appreciation, art. Things
8 like that. It wasn't rigorous at all.

9 Q. Did your son graduate?

10 A. Yeah, he did. We were proud of him for doing that. He
11 got an award for most improved reader and for dorm management.
12 He kept a clean room. He took a lot of showers. Kept himself
13 clean.

14 Q. Tell the Court, if you would, what kind of things your son
15 learned. For instance, mechanics, what did they teach him?

16 A. Well, he never used any of those things at home. I can't
17 say -- I mean, he would help me in the garden some. I guess
18 that's one way I saw, he would help plant things and garden. I
19 viewed that as a potential job for him in the future. It was
20 something that I was hopeful that he would get plugged into. I
21 was looking for him to get plugged into something besides games
22 and horror movies and being a gangsta in his mind. In his
23 mind, he was a gangster. It was ridiculous.

24 Q. Would he understand, for instance, why you would need to
25 weed the garden or things like that?

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1 A. No. He pretty much -- I would have to take him through
2 the steps one by one by one. It was a fern garden that I asked
3 him to weed next to the -- next to the wooden fence there. And
4 he just rolled it -- when I came back to see -- I just wanted
5 him to pick out the weeds. And when he came back, he had
6 rolled up the whole fern thing like a layer of sod and so there
7 was nothing there but soil left. So I had to put that back up.

8 And then he would -- he would swab the deck sometimes for
9 me, but you would have to sit out everything. You would have
10 to have the bucket with the mop. And again, somebody looking
11 at this would say he's just using you, he knows what he has to
12 do, he couldn't. There was -- if everything wasn't set up, he
13 wouldn't be able to do it.

14 Q. Was he able to pack when you would go on trips?

15 A. No. He would -- not on his own, definitely not. We would
16 give him a list of the clothes eventually. But if you asked
17 him to pack, he would just bring his Game Boy, his Xbox and his
18 headphones. That would be the end of packing. Clothes were
19 secondary.

20 I mean, he wore the same clothes all the time almost.
21 Whether it was cold or hot, he didn't -- he was disoriented to
22 weather, to the geography, to the time. So it was tough to get
23 him packed. Getting him to the plane was an ordeal. If he was
24 plugged into a game, you were in trouble. You were going to
25 have a hard time. No matter what you offered him as a reward

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1 and said, you know, we're going fishing, the people are coming
2 to pick us up. Just stop your game and we can go fishing. He
3 wouldn't do that. I mean, he was stuck. He was rigid. He had
4 the problem of focusing and then he also had the problem of
5 hyperfocusing at the same time. He was rigid and hard for him
6 to change to something else.

7 Q. After Bachman Academy, what did your son do?

8 A. Well, even before he left Bachman, we had looked at some
9 job training programs in the state. There was the Louisiana
10 Workforce Commission that provided jobs for disabled people.

11 And so in April, we had interviewed with a program called
12 ARC, Association for Retarded Citizens, I think that's what it
13 stands for. And there's a guy named Jeff Schiro. And he
14 wasn't very optimistic about finding him a job. But
15 fortunately, he was a friend of a neighbor who I used leverage,
16 I guess, to help him get in the program. And so that was set
17 up when he came -- there was no formal job, there was work
18 around the house like we usually did.

19 There was part-time jobs, volunteer jobs. He would work
20 for my aunt -- or my sister sometimes also. Our neighbors
21 sometimes. He tried this pressure washing thing for other
22 neighbors, and they would let him do it once. But that was --
23 that was about it.

24 After that, as far as paying jobs, there were no paying
25 jobs, just volunteer jobs I set up.

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1 Finally he got a job in January 2012 with Rouses, a local
2 grocery store. And again, he initially did well. He was into
3 it. He would show up on time. He would listen to the
4 instructions he was given, but basically had to be mentored in
5 how to, you know, fill the bags with food. And he loved
6 helping people bringing it out to their car because they would
7 give him a tip.

8 And it seemed, I thought -- but again, all these jobs and
9 everything, the most he could work would be 20 hours a week.
10 We're not talking full time. We're talking four hours a day at
11 most at all these volunteer jobs, four hours a day at most.

12 The Rouses job was mainly a weekend job, six hours each
13 day. And it was a real job. He got a real check. But then he
14 started testing the edges like he always does. He makes a
15 good -- he's withdrawn initially trying to figure out what he
16 can do and can't do and whether they get on his case if he does
17 this or he does that. And he finds out that people aren't
18 watching him all the time, so he stops doing things the way he
19 does.

20 And he wasn't supposed to wear earphones to work and he
21 said I only listen at break. He was doing more than that. He
22 was doing it at work and eventually got fired from that after
23 eight months or so. I think the big thing that happened is his
24 boss changed and his new boss wasn't as forgiving for
25 work-related missed things that he wasn't doing.

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1 Q. After his job at Rouses, what did he do?

2 A. Well, then he -- we went to another group called AcME,
3 which also found jobs. He was declared disabled by the state
4 and we went to -- we were advised to get some Medicaid for him,
5 just in case we died, something happened to us that we had
6 these state systems set up. So we got Medicaid for him. We
7 got him disabled. He had to take an exam by their psychologist
8 to get -- to have to prove that he was disabled. And they
9 agreed with that. So he got some Medicaid.

10 And he was going to Louisiana Workforce Commission. And
11 unfortunately I learned the ins and outs, a little about it. I
12 mean, they pay \$6,000 through these companies to find a job for
13 them. And they get a lot of the money up front. And so if you
14 use the money once, to get a job at Rouses, it's hard to have
15 any money left to find him a job elsewhere.

16 So AcME did what they could, they found him a job at
17 Popeyes, he lasted one day. They expected him to take a bus to
18 get there, which is impossible. You know, so we took him
19 there. And all he had to do was cut up the chicken somehow and
20 put it out to be fried. And he just didn't understand what
21 they were talking about. They could show him, but he needed a
22 mentor to sit there to tell him, do this and then do this. He
23 couldn't do it on his own. So he lasted one day.

24 Q. When you say they expected him to take a bus to work --

25 A. Yeah.

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1 Q. -- was he able to use public transportation?

2 A. Well, when he was working at the hospital, we -- in
3 general, no, he couldn't do public transportation on his own.
4 But in certain select circumstances, where there was only one
5 bus coming to the hospital where he worked, I finally convinced
6 him to take the bus home, which was like a four-block ride,
7 five-, six-block ride. And the first time he did that, he went
8 to the end of the line. He called me on the phone, he didn't
9 know where he was. I said just stay on the bus until it
10 circles around. So he came back around and he got let off in
11 front of the hospital, I think I picked him up.

12 Eventually he was able to do that. That was a major
13 accomplishment, that was like a perfect day for Evan, where I
14 would drop him off at the hospital, he would work there,
15 volunteer there. And then he could go to work out two blocks
16 away at the wellness center, he had gotten into working out and
17 losing weight and being concerned about his body and girls.
18 And then he would go back to the hospital, take the bus home.
19 That is -- that was after months of doing that, that he could
20 finally do that. It wasn't every day, it was just some days.

21 And he would eventually, again, even at jobs as a
22 volunteer at the hospital, he would test the edges and see what
23 the least amount he could do. He would take a lot of cigarette
24 breaks. And actually, he went to a local drugstore and bought
25 some whiskey during the -- while he was working. And he just

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1 wasn't growing up. He wasn't growing up after four years of
2 trying to get him to grow up after he graduated, four years of
3 trying to get him to grow up, he just wasn't -- and he still
4 would get angry and he still would yell. And you would have to
5 deal with the yelling. I mean, you could stay calm, but inside
6 your sympathetic nervous system was just firing trying to find
7 an answer with what is wrong with you, why are you angry now,
8 what do we have to do, why can't you figure it out.

9 I think that's one of the reasons he became so angry is
10 that he couldn't figure things out, what to do next, he didn't
11 understand what the next step was. So he would just give me
12 his desires and what he wanted. And I would say, okay, let's
13 think about this and what we had to do. I had to come up with
14 the plan.

15 So we were getting cardiac issues. I mean, I was getting
16 atrial fibrillation at night. Kathy was having her own chest
17 pains and so on. This was after many -- it was four years. We
18 were, I think, suffering from something called captive heart
19 syndrome or you're under stress all the time. Your sympathetic
20 nervous system is going off.

21 And it was -- our daughter was getting like posttraumatic
22 stress syndrome also trying to deal with this herself. Because
23 you never knew when this anger -- again, it was better after
24 lithium. It was better, but it still occurred. There was no
25 reasoning for a while until things settled down.

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1 So we had to look for other places, we had to look outside
2 the home. We -- I talked to Dr. Pelts, a psychiatrist, about
3 it a little bit, and he recommended a consultant by the name of
4 Christie Woodfin. If you go online for these things and tell
5 people you have a troubled teenager, all of a sudden you have a
6 thousand friends and they are emailing you every day about oh,
7 we have the solution, we have this, we have that. We have a --
8 you know, anyway, it was helpful to have her give us
9 suggestions about where he might go. And they gave us five
10 choices.

11 Q. Where did your son go?

12 A. He eventually went to Waterfall Canyons in Utah.

13 Q. And what was the purpose for going there?

14 A. That was to be independent, to learn skill, independent
15 life skills. He got his own apartment in this building with
16 six other kids and they would help him get a job. They had a
17 job counselor. It was perfect. It was the perfect place for
18 him.

19 Also there they taught him to use the bus again. It was
20 one bus, one way to one place. And he would get off at the bus
21 stop. And I thought there was one month -- he got a
22 horticultural job there. It was to help him get life skills
23 and get a job. I mean, he needed a job. I didn't realize how
24 important that was for him to get a job. Because he needed
25 something to get him out, to get -- to do, a passion, other

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1 than just these impulses he had. He had to get outside
2 himself, otherwise he was living from impulse to impulse to
3 impulse. So that was the reason for us sending him there.

4 Q. How did he do at Waterfall?

5 A. Again, he had his usual MO. Did great initially, listened
6 to everybody, was very respectful. Did everything they asked.
7 Was -- actually found a job, horticultural job at the
8 university there, Weber -- is it Weber State, I think, in
9 Ogden, Utah. It was perfect. They said he could listen to his
10 music. He was working eight-hour days. He was getting up
11 early. He was taking the bus there.

12 And then he started to find what he could get away with
13 and what he didn't need to do. Again, somebody looking at this
14 from outside would say well, he's just lazy. He's just taking
15 advantage of the situation. And he's just, you know, not going
16 to ever be any good.

17 And we still were hopeful for him. We still -- I mean,
18 the brain can still mature up until late 20s. This was at 22.
19 So he had these glimpses that gave us hope that he would
20 continue to mature to at least independent living.

21 So they eventually fired him because he did take advantage
22 of disappearing for breaks and not doing -- and then the other
23 thing that happens once Evan gets money is he can't save it.
24 He's got to spend it on something. If he knows he has money,
25 he's going to spend it somewhere. So he would spend it on

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1 alcohol sometimes. I don't think his alcohol, drug abuse was a
2 constant problem. It was a goal of his, but we pretty much
3 kept him off the alcohol and off the drugs while he was living
4 with us. And I think they did too. He would feel -- well, I
5 don't know about guilty, but he would know we would be angry if
6 we found out he was doing it.

7 We had several contracts, behavior things that we wanted
8 him to do that he -- he would drink only at certain events, one
9 beer. We worked it out with Dr. Pelts. He would have a beer
10 with family get togethers. We had a huge family, a lot of
11 first cousins and we we would have Thanksgiving and Christmas
12 and July 4th and crayfish boils on Mother's Day. And he would
13 drink during those periods of time, just two beers supposed to
14 be max.

15 And once he got the money, he would binge, I think,
16 sometimes. But he would turn himself in. He would say well, I
17 did this and did that because I really couldn't plan anything
18 without us. I mean --

19 Q. How did his stay at Waterfall end?

20 A. So his MO again, he became more disrespectful. It wasn't
21 from excess drugs and excess marijuana or cocaine or anything.
22 He was just disrespectful. And we got to know the head of the
23 Waterfall Canyons supervisor there pretty well. And he said I
24 can't control him anymore. He doesn't listen to me. He
25 doesn't -- he's starting to put holes in the wall. Not only

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1 that, but he's irritating the other residents. This is a group
2 home that everybody has to get along, so they asked him to
3 leave. That was it. So he went there in February 2015 and he
4 lasted until August 2015.

5 Q. Where did he go after Waterfall?

6 A. Well, he came home unexpectedly. We told him he couldn't
7 come home and we had made arrangements for him to go to this
8 place called Aspiro afterwards. But they had put him into a
9 motel. He had all his belongings and he had the Internet to
10 make connections with something called Meet Me, which was a
11 dating site. And they were more than happy to help him with
12 all the money he had and all the devices he could sell at
13 GameStop. And they helped him get around. And they helped him
14 sell stuff and they took most of his money.

15 But they did give him enough money to get on a bus.
16 That's the one thing they did for him. They took the rest of
17 the money. So they told him when to get up, when to do this
18 and that. So he did leave the motel. He was supposed to stay
19 at the motel until he went to Aspiro. He was getting his
20 medicine by the Waterfall Canyons people. So he was 22 at this
21 point. Yeah, 23.

22 So he did take the bus. He left his phone in the motel
23 room. That's -- that was something very important to him. I
24 mean he has no idea how to plan things, his impulses obstruct
25 his ability to think. His emotions trump everything. He just

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1 knew he was supposed to get on the bus. He leaves the most
2 precious thing to him in the motel room and gets on the bus.
3 And he has no food, no money, no medicines. Nothing. And this
4 is in Ogden, Utah. And he did have a ticket to New Orleans but
5 he had no idea how to transfer. And so we didn't know where he
6 was during this period of time. We were very worried about
7 him. I'm thinking somebody had done him in, stole his things,
8 especially when we found out he left his phone in the room. We
9 thought, this isn't good.

10 So he ended up befriending somebody on the bus. At first
11 this person was irritated by Evan because he thought this guy
12 is putting me on. He doesn't know how to change a bus, he
13 doesn't know how to get food. Again, Evan's appearance is one
14 of a functioning 23 year old who knows what he's doing. But in
15 reality, Evan was scared out of his mind and had no idea what
16 to do.

17 And this guy called us. And so we were able to have some
18 say so in where things went. And this guy fortunately was also
19 going to New Orleans. So we met Evan at the bus stop and he
20 was -- it was a good meeting. He was very happy to see us.

21 Q. After your son returned home unexpectedly, where did he
22 go? What did you do with him after that?

23 A. Well, he stayed in a motel in -- about a half a mile from
24 us, and we arranged for him to go to Aspiro. We did allow him
25 to come home one day, see the new puppy, see his one friend,

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1 Michael. He had one friend, Michael, from grammar school, who
2 was as impaired as Evan was but without all the anger issues.
3 And then we took him to Aspiro after about a week.

4 Q. And how long did he last at Aspiro?

5 A. He finished the program. It's an outdoor therapeutic
6 program also where they just hiked and did some rock climbing.
7 And, again, a very mentored situation. He had to do some
8 cooking. And he had to get along with the other six people who
9 were there, I think. I think there were about six.

10 And I just dropped him off at the airport and they picked
11 him up and they brought all his gear. And he lived outside for
12 three months and had to interact with the other kids and learn
13 how to deal with his anger. He was away from his electronics.
14 I didn't visit him while he was there, Kathy did, and she could
15 tell you more about that visit.

16 Q. After Aspiro, where did he go?

17 A. He went to Q&A. He had shown some improvement in
18 controlling his emotions and we were considering taking him
19 home. But the counselor that was there by the name of Caitlin
20 didn't think it was a good idea. And Christie Woodfin, our
21 other counselor, didn't think it was a good idea. And Mark
22 Nye, the counselor at Waterfall Canyons, felt like he could --
23 this was the best time for Evan to transition to another
24 independent living program.

25 So of the five -- of the initial five programs that

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1 Christie Woodfin had given us, Q&A was in that, the first five,
2 but we didn't want to go there initially because Waterfall
3 Canyons had more vocational facilities and it was -- he had his
4 own room and he would be helped getting a job. It seemed to be
5 more job related, and it didn't come to pass when he got the
6 gardening job so we chose them.

7 So we had this recommendation for Q&A from Christie
8 Woodfin at the first. And I had talked to them, but I didn't
9 feel like it had enough vocational stuff to help Evan and it
10 was more isolated. As few temptations as Ogden had, Evan was
11 able to find them. So we didn't feel like he had could go back
12 to Waterfall, though they would have taken him. They would
13 have taken him. And it was something we were considering, but
14 we put him into Q&A instead.

15 Q. Now --

16 A. Caitlin recommended and Christie -- Caitlin didn't know
17 Christie. This was two independent consultants who came up
18 with this idea.

19 Q. When you completed the paperwork for your son to be
20 admitted into the program at Q&A, who signed, for instance, the
21 financial documents to guarantee the payment?

22 A. I mean, I just remember visiting the place. We had been
23 through -- as a parent going to a place that's going to take
24 care of your child, the most important thing is safety. And
25 the other thing is efficacy. And what they were worried about

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1 is that -- is your child violent and going to beat up other
2 kids here, and can you pay for this. Those are the two things
3 from there. And two things from my end when I would go there.

4 I don't remember talking about anything about paperwork.
5 I think they knew I was good for the money. We didn't get into
6 the money. All I did -- I wanted it to be safe. It was a
7 farm, he liked animals. What could be safer than a farm?

8 And then the other thing was they could -- they had a
9 restaurant where he could work in. And if he lost the job he
10 might be able to go back. You know, they would take him back
11 because that's what -- they owned the restaurant too and they
12 owned Q&A, so it seemed like that he could have a job there
13 too.

14 So I didn't -- I don't remember signing anything when I
15 visited them. I visited them in November sometime. And then
16 when I dropped him off November 22nd, I dropped him off at a
17 meeting spot about halfway between, so I didn't sign anything
18 then either. So the first trip was mainly for inspection. The
19 second trip was to drop him off. And I didn't have any contact
20 with the contract, I don't remember.

21 Q. When you met the Q&A people at the drop-off location,
22 first of all, where was that?

23 A. Staunton, Virginia.

24 Q. Okay. And at that point in time, was there any
25 presentation of any paperwork for you to review or for your son

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1 to sign?

2 A. No.

3 Q. Were you told by anyone that your son would be asked to
4 sign paperwork after you dropped him off?

5 A. No. No.

6 Q. And what were the financial arrangements, how were you to
7 pay and how much were you to pay Q&A for taking care of your
8 son?

9 A. It was \$9,500 a month.

10 Q. And is that consistent with what you had paid at these
11 other places as well?

12 A. It's a little bit more. It's more than Waterfall. For
13 Bachman, we paid 45,000 a year.

14 Q. And when your son -- when you dropped him off at this
15 point, what was his mental condition like at that point?

16 A. Subdued. He -- he was scared. I told him, you can do
17 this, that this was just temporary. That he had to look at
18 this like a college where he went away for a while and learned
19 how to live on his own.

20 So we met in a church parking lot and said good-bye. That
21 was the last time I saw him.

22 Q. Sir, you've seen the document that's at issue in this
23 case, the contract authorization, binding arbitration document,
24 have you not?

25 A. Yes.

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1 Q. Had you seen that document at any time prior to the filing
2 of this lawsuit?

3 A. No.

4 Q. Did your son ever tell you, hey, I signed a document that
5 says I'm waiving my right to file a lawsuit in the event
6 there's a problem?

7 A. No.

8 Q. Had your son threatened to sue people in the past?

9 A. Sure. Me. I mean, he called the police one time because
10 I was abusing him, he said. And they came and they laughed.
11 And they saw his room and all the stuff he had in there. Yes,
12 he's threatened to sue people in the past.

13 Q. Your wife is a lawyer?

14 A. Yes.

15 Q. And did he ever threaten people with her suing on his
16 behalf?

17 A. Sure, yeah.

18 Q. And would your son have consented to them voluntarily
19 coming in at any time they wanted to and search his room or
20 search his belongings?

21 A. That would be tough. I don't think so. No, he wouldn't.

22 Q. And why do you say that?

23 A. He was very protective of his stuff. I mean, he had a
24 collection of mass that he liked to show off, and being one of
25 the precipitating factors that led to his admission to the

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1 psychiatric facility one time was that he was taking these male
2 enhancement products. He was very concerned with penis size.
3 And he felt like he wasn't big enough. And these male
4 enhancement products have things that rev you up. Not
5 physically, just mentally. So I knew he had it. And I knew I
6 had to get it. So to do it, I called the police and told them
7 what the story was and took the stuff. He had a meltdown,
8 ended up in the psychiatric hospital. And so he's pretty
9 protective of his stuff.

10 Q. Doing your visit to Q&A, did anyone ever mention that your
11 son was going to have to sign a document that said he was
12 releasing Q&A from any liability in the event he would be
13 injured there?

14 A. No.

15 Q. Was your son capable of signing legal documents?

16 A. No.

17 Q. And why do you say that?

18 A. He doesn't understand legal documents at all. I mean, he
19 doesn't know what they -- he wouldn't even sign behavior
20 contracts that we would set up for him sometimes. Because he
21 understood what those were. He wouldn't sign them because he
22 understood it meant privileges, it meant responsibilities. We
23 put it on the mirror, you would have to do that. But other
24 things, there's no way he understood it, this.

25 Q. Did he ever have a driver's license?

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1 A. No. He had an identification card. Couldn't get a
2 driver's license.

3 Q. Why could he not get a driver's license?

4 A. Well, he couldn't pass the test, first off. And,
5 secondly, he has anger problems. And, thirdly, he would have
6 to plan how to drive. He would get lost. He would get in
7 wrecks.

8 So we had a deal. You know, certain behaviors might get
9 him towards getting a driver's license. And I put the burden
10 on Dr. Pelts for that. I wouldn't -- I told him, Dr. Pelts
11 won't let you get a driver's license until you meet these
12 goals. And he never could meet them. So we never got him a
13 driver's license.

14 MR. SIMS: Your Honor, that's all the questions I
15 have.

16 THE COURT: Cross-examination.

17 MS. SAAD: Your Honor, before I begin the
18 cross-examination, I would like to request that the other
19 individuals who will be proffered as witnesses in this action
20 be sequestered.

21 THE COURT: Are they being offered as expert
22 witnesses?

23 MS. SAAD: I do not know what plaintiff will be
24 offering them for. I believe one at least will be offered as
25 an expert. But if Mrs. Harris will be offered as a witness in

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1 this action, Your Honor, I would ask that she be sequestered.

2 THE COURT: Are you going to call Mrs. Harris?

3 MR. SIMS: I do plan on doing that, Your Honor.

4 THE COURT: She is not a party?

5 MR. SIMS: You are correct. She's just a beneficiary
6 of the estate.

7 THE COURT: In that case, I will grant it with
8 respect to Mrs. Harris. I apologize.

9 Do you have any others that are nonexpert witnesses?

10 MR. SIMS: No, Your Honor.

11 THE COURT: Okay. Can you go out in the hall,
12 please.

13 MS. SAAD: Can I move this a bit forward?

14 THE COURT: You can.

15 MS. SAAD: Your Honor, I may have to familiarize
16 myself very quickly with this Elmo. I may need help, actually.

17 CROSS-EXAMINATION

18 BY MS. SAAD:

19 Q. Good morning, Mr. Harris. I have just a couple quick
20 questions for you.

21 First, I just want to review, you discussed a little bit
22 of your background earlier in your testimony. And you
23 testified that you are a nephrologist; is that correct?

24 A. Yes.

25 Q. You are not a psychiatrist; is that correct?

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1 A. No.

2 Q. You have not completed any residencies or fellowships in
3 psychiatric care; is that correct?

4 A. No. I took rotations through --

5 Q. Okay.

6 A. -- psychiatry.

7 Q. So you had a normal rotation, but you do not hold yourself
8 as an expert in psychiatric care; is that correct?

9 A. I don't know. After raising Evan, I might be.

10 Q. Do you contend that you are a psychiatric expert?

11 A. Not for the court reasons, just other people.

12 Q. You are not qualified to deem someone legally competent or
13 incompetent; is that correct?

14 A. When I see patients, I can attest to their competence for
15 deciding certain things in their life. Like end of life
16 decisions, code/no code, if they are competent to do that.

17 Q. But you have never deemed anyone legally incompetent; is
18 that correct?

19 A. No.

20 Q. I'm sorry, you said that's not correct?

21 A. That -- well, this is a double negative.

22 Q. It might have been. That might have been a confusion of
23 terms.

24 Is it correct that you have never deemed anyone
25 incompetent?

FRIEDRICHS HARRIS - CROSS

1 A. Yes.

2 Q. And you're not offering expert witness opinions here
3 today?

4 A. No.

5 Q. You're here offering testimony as Evan Harris's father?

6 A. Parent.

7 Q. You've testified that it's your contention that Evan
8 Harris lacked capacity to enter a legal contract; is that
9 correct?

10 A. Yes.

11 Q. You contend that he lacked capacity to sign legal
12 documents; is that correct?

13 A. He could sign them physically when people demanded that he
14 do it.

15 Q. So you don't deny that he could sign them with his pen, as
16 in physically --

17 A. Yes.

18 Q. -- and capably write the letters of his name?

19 A. Yes.

20 Q. However, you -- you do not agree or it is your contention
21 that Evan Harris lacked the mental capacity or competency to
22 enter into a binding legal document?

23 A. Right. He wouldn't understand what he was signing.

24 Q. Even if it's a simple contract, you contend that Evan
25 Harris lacked capacity to enter that simple contract?

FRIEDRICHS HARRIS - CROSS

1 A. Well, as I said, behavior contracts that I had with him,
2 he could sign. He sometimes would sign. He initially would
3 sign them. But after a while, he understood exactly what that
4 behavior contract was, it was privileges and responsibilities
5 and penalties. He understood that. So are you talking about
6 that?

7 Q. So you actually used behavior contracts as a means of
8 parenting Evan Harris?

9 A. We tried.

10 Q. You did use behavioral --

11 A. We tried --

12 Q. -- contracts?

13 A. We tried behavioral modification, it didn't work.

14 Q. You used more than one behavioral contract throughout --

15 A. Yes, several times.

16 Q. -- his growth?

17 A. Sure. There were rewards and punishments, mainly tied to
18 money, mainly tied to money. It would be a daily -- daily
19 thing where if he had good behavior that day, he would get \$2,
20 like that.

21 Q. So you agree that there are some agreements and some
22 contracts that Evan Harris could understand and enter?

23 A. At a very primitive level.

24 Q. But you do agree that he could understand and enter some
25 contracts?

FRIEDRICHS HARRIS - CROSS

1 A. He would understand it that day. The next day, he would
2 not. His memory was that poor, that any contract that you
3 spent hours trying to help him understand what it was, the next
4 day it was all new to him.

5 Q. I think what you're discussing is a memory problem, but
6 you are --

7 A. Yes, that's important.

8 Q. You're stating that --

9 THE COURT: Okay. We need to make sure that one
10 party talks and the other party talks so we are not both
11 talking at the same time. Otherwise my court reporter is going
12 to hurt me.

13 MS. SAAD: Yes, Your Honor, that's my fault. I
14 apologize.

15 A. So memory is important.

16 Q. Mr. Harris, you agree, though, that at the time of signing
17 a contract, the time -- at the time that Evan signed a
18 contract, he could understand a contract if explained to him in
19 simple terms?

20 A. No, I don't agree.

21 Q. I think that's what you just said. Did you not just say
22 that at the time of the contract, he could agree -- he could
23 understand it?

24 A. The behavior contracts that we did with him that address
25 things that he was familiar with every day, like spitting, like

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1 cursing, like doing his laundry, like keeping his room clean,
2 yes, he could understand those. But any legal terms, no. And
3 arbitration, no.

4 Q. In fact, on these behavioral contracts, Evan Harris even
5 made modifications to those behavioral contracts; is that
6 correct?

7 A. Okay. Okay. Sometimes he did.

8 Q. So Evan Harris could read, understand and make
9 modifications to those behavioral contracts; is that correct?

10 A. On a very primitive level.

11 Q. Would you agree that the behavioral contracts that you
12 used with Evan Harris were more than five pages long?

13 A. No. I mean, I saw -- I remember two pages. I don't
14 remember five.

15 Q. You don't remember using a behavioral agreement that is
16 longer than five pages?

17 A. Show me the example. I don't know. There may have been
18 one from when he left Three Springs. I don't know that it was
19 my contract. All my contracts that I made with him were very
20 limited. I didn't make any five-page contracts.

21 Q. If you signed a contract, was it one that you made?

22 A. Again, I would have to look at it. I remember the first
23 contract, behavior contract, we ever made with him, was with
24 the education consultant before he went to Bachman. It was
25 something about summer.

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1 I mean, again, you're right. There was several
2 rudimentary, primitive behavior contracts that he took with
3 him. It was nothing complex. And he may have changed some
4 things on those things. But again, it was nothing complex.
5 And it was something that he was familiar with that day.

6 Q. You would agree those behavior contracts had multiple
7 pages and multiple terms?

8 A. Simplistic terms. Nothing --

9 Q. But you do agree that they had multiple pages and multiple
10 terms?

11 A. The longest I remember is like two pages, or maybe three
12 pages. Five sounds a little long to me. Maybe you can show me
13 an example.

14 MS. SAAD: Your Honor, I would like to mark this for
15 identification. Your Honor, if I may approach?

16 THE COURT: You may.

17 Q. Mr. Harris, I am going to hand you what's been marked as
18 Defendants' Exhibit A.

19 A. My glasses are on the table.

20 Q. Oh, do you need them, your glasses?

21 MS. SAAD: I'm blind as a bat too.

22 Q. Mr. Harris, do you recognize the document that I've just
23 handed you?

24 A. Yes.

25 Q. And what is the document that I just handed you? This is

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1 a behavioral contract that you --

2 A. Right.

3 Q. -- entered into with your son; is that correct?

4 A. Yes.

5 Q. Would you please count the number of pages in this
6 agreement?

7 A. Seven.

8 Q. And, Mr. Pelts, please turn to the last page of the
9 agreement.

10 Does that have your signature on it?

11 A. I'm Dr. Harris, I'm not Mr. Pelts.

12 Q. Oh, I'm so sorry if I said Dr. Pelts. I'm very sorry.
13 Mr. Harris --

14 A. Yes, that's my signature, the last page.

15 Q. -- turn to the last page. You identified that on the last
16 page, that is your signature on this behavioral contract?

17 A. Yes.

18 Q. Is that also -- you also identify Evan Harris's signature;
19 is that correct?

20 A. Yes, it is Evan's signature.

21 Q. And that is also your wife's signature?

22 A. Yes, it is.

23 Q. So all three of you signed this behavioral agreement that
24 you entered into with Evan Harris; is that correct?

25 A. We did. Do you want to ask me if it worked?

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1 Q. After this agreement, you actually entered into additional
2 behavioral agreements; is that correct?

3 A. This was for the 2007, and I amended it to 2008. This
4 particular period of time was the most horrendous time of Evan
5 and our interaction.

6 Originally -- actually, I didn't craft this originally.
7 This was originally from Three Springs. Do you see it was
8 crossed out Three Springs and I put Bachman? So I -- this was
9 when he came home from Three Springs, they made out this
10 contract originally.

11 Q. But you --

12 A. -- and then I amended it.

13 Q. You not only used it in 2007, you used it in 2008; is that
14 correct?

15 A. Yes, I had to.

16 Q. Then you mentioned you used an additional behavioral
17 agreement then later; is that correct?

18 A. I probably did, yeah. It was -- it was more amended than
19 this.

20 Q. So you used multiple contracts with Evan Harris as a means
21 of parenting. And you used them -- you had him sign these
22 agreements and you have testified that he understood them?

23 A. He would understand things like use of a computer, use of
24 telephone, watching television, playing video games, having
25 friends over, activity away from home after permission from

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1 parents. Watching one horror movie, shopping with dad once,
2 caffeine drinks, eating meals. Music listening, swimming.
3 Watch R rated movies for -- that's what he would understand.

4 You know, he would get punished for hitting any family
5 member, playing with guns and knives, any instances of being
6 arrested. Any refusal -- I didn't craft this originally. This
7 was from Three Springs.

8 Q. Moving on, you mentioned that -- you detailed that Evan
9 Harris was in multiple programs or --

10 A. Yes.

11 Q. -- facilities during his youth and actually as an adult;
12 is that correct?

13 A. Yes.

14 Q. And one of the programs that he was in, you mentioned, was
15 Waterfall Canyons independent living program in Utah; is that
16 correct?

17 A. Yes.

18 Q. And when Evan left that program, Waterfall Canyons, he
19 actually signed himself out; is that correct?

20 A. I don't know. They kicked him out.

21 Q. Is it your -- is it your contention that you don't know
22 whether he signed himself out?

23 A. Right. I don't think there was a sign out. I think they
24 called me and told me he was kicked out. He wouldn't know what
25 to do. I mean, they called me about him not being able to stay

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1 there anymore. I didn't know anything about him signing
2 something.

3 MS. SAAD: Your Honor, I would like to have this
4 marked for identification. Actually, before I do that, I would
5 like to move for the admission of Exhibit A into evidence.

6 THE COURT: Any objection?

7 MR. SIMS: No objection, Your Honor.

8 THE COURT: Defendants' Exhibit -- you have it A?

9 MS. SAAD: I think it's A.

10 THE COURT: A will be admitted into evidence.

11 (Defendants' Exhibit A was admitted.)

12 Q. Dr. Harris, I'm going to hand you what's been marked as
13 Defendants' Exhibit B.

14 A. Winfall -- oh, Waterfall. This was supposed to be
15 Waterfall Canyons. That's a misstatement. He didn't sign
16 himself out.

17 Q. Dr. Harris, do you recognize the document I've just handed
18 you?

19 A. No.

20 Q. You do not recognize this document?

21 A. Well, it's an email. I recognize it's an email to
22 Dr. Pelts. I don't remember sending this.

23 Q. And this email is essentially signed electronically by
24 you. It says Rick; is that correct?

25 A. It is.

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1 Q. And it is sent to Dr. Pelts?

2 A. Right.

3 Q. That is Evan Harris's psychiatrist; is that correct?

4 A. That is true.

5 Q. And reading this email, it says -- this is you writing to
6 Dr. Pelts?

7 A. Yes.

8 Q. "Evan signed himself out of Windfall Canyons independent
9 living program in Utah and hocked his electronic equipment to
10 get money to take bus to New Orleans."

11 Did I read that correctly?

12 A. Yes.

13 Q. And you wrote this email to Dr. Pelts?

14 A. Dr. Pelts.

15 Q. So is it still your contention that he did not sign --
16 that Evan Harris did not sign himself out of Waterfall Canyons?

17 A. I don't remember him signing himself out of Waterfall
18 Canyons.

19 Q. You don't deny what's written in your email that you
20 wrote, do you?

21 A. It's in the email. I misspoke.

22 Q. You misspoke in the email?

23 A. In the email.

24 Q. So you are denying what is written in this email
25 August 11, 2015?

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1 A. I'm denying that I knew that he signed himself out. I
2 talked to Mark Nye and it was my understanding they were
3 kicking him out.

4 He couldn't have -- he wouldn't have signed himself out
5 because he didn't know how he could sign himself out. He
6 didn't understand he could sign himself out. So it's a
7 misstatement. Sorry. I also misstated the name of the
8 company, it's Waterfall, not Windfall. So maybe I was
9 distraught.

10 Q. The last sentence of this email states that "I am willing
11 to arrange a cheap motel to keep him off the streets;" is that
12 correct?

13 A. Yes.

14 Q. And you testified a bit earlier that you did, in fact, put
15 Evan Harris in a hotel room for -- by himself for about a week;
16 is that correct?

17 A. That's correct.

18 Q. So he did function independently in that hotel for about a
19 week?

20 A. I wouldn't say it wasn't independent. We brought him
21 peanut butter and jelly sandwiches and kept track of him. He
22 didn't go anywhere. We did everything for him. We were his
23 enablers.

24 Q. He was in a hotel prior to coming to Louisiana; is that
25 correct?

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1 A. Yeah. What happened? He got in a mess.

2 Q. While Evan Harris was at Waterfall Canyons, did he have
3 any kind of conservatorship set up?

4 A. You mean a trustee?

5 Q. Did he have any type of --

6 A. I don't know what you mean.

7 Q. -- conservator, such as a legal guardian, that signed on
8 his behalf, had to sign on his behalf while he was at Waterfall
9 Canyons?

10 A. I don't remember that specifically. Legal guardian. I
11 mean, what happens is -- I mean, we -- we had made -- when we
12 made a will out, we had a lawyer make that out and we talked to
13 him about Evan's problems and limitations and we set up a
14 trustee for that. And Evan's best chance for survival was with
15 us. If we weren't around, we had to pay somebody else to take
16 care of him. And that's what we were doing with Q&A and that's
17 what they didn't do.

18 Q. Let me rephrase my question. You did not at any time have
19 Evan Harris deemed incompetent such that he was not a legal
20 adult in the eyes of law; is that correct?

21 A. When we talked to this lawyer, we talked about
22 interdicting him. And he said it would be better not to right
23 now. You had to do it before they are 18. I think he was at
24 18. And it had to be adversarial and you take your adult to
25 court. I'm not doing that. So no, we did not interdict him.

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1 We still had hope that he would come back to us. We still had
2 hope that he would be independent on his own sometime. There
3 is still literature out there showing that the brain can
4 develop until they're in like 20s, so yeah, we didn't interdict
5 him.

6 Q. And because Evan Harris was an adult over the age of 18
7 and because he had never been deemed legally incompetent, he
8 was the proper party that would sign legal agreements on his
9 behalf; is that correct?

10 A. Apparently. It was demanded.

11 Q. You testified that you didn't complete the application
12 process for Q&A, that you were unfamiliar with the contract and
13 the arbitration agreement; is that correct?

14 A. Yes.

15 Q. You are not contending that your household, that you or
16 your wife, neither one saw or completed that application
17 process, are you?

18 A. No.

19 Q. And did you trust your wife, who is an attorney, to
20 complete the application and review those documents and submit
21 them to Q&A on your behalf; is that correct?

22 A. Completely. It was a burden, actually. I mean, we had
23 been through that process before, so...

24 Q. In fact --

25 A. Filling out paperwork.

FRIEDRICHS HARRIS - CROSS

1 Q. And, in fact, your wife, Mrs. Harris, did complete the
2 application process and review those documents and submit them
3 to Q&A; is that correct?

4 A. What she could fill out, she filled out. She can address
5 that when she talks to you.

6 MS. SAAD: Your Honor, if I could have a moment?

7 THE COURT: You may.

8 BY MS. SAAD:

9 Q. Dr. Harris, I just want to revisit what has been marked as
10 Exhibit A briefly, which is the behavioral contract that we've
11 discussed.

12 A. Yes.

13 Q. You mentioned that Evan Harris could only understand very
14 simple terms.

15 A. Right.

16 Q. But this behavioral contractually contains some legal
17 procedures and terms that are not so simple, such as amendment;
18 would you agree with that?

19 A. Amendment is a word he would not have understood.

20 Q. But yet you had him agree to this contract; and, in fact,
21 he did amend this contract; is that correct?

22 A. Yes, he did; but he didn't know what he was doing in an
23 amendment. He wasn't agreeing with the simple use of computer
24 to two hours, unlimited he put in. Emily gets a turn.

25 Watching television, two hours, he scratched that out and put

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1 unlimited. We're talking very simple amendments. He didn't
2 understand the term amendment.

3 Again, I used this from Three Springs. They are the ones
4 who wrote this originally, seven pages. I didn't write this.
5 They took it, they gave it to him on his departure from Three
6 Springs and I amended it after that for 2007 and 2008.

7 There were other behavioral contracts before this that I
8 wrote after it that were two or three pages, and that's what I
9 was referring to. And what I was concentrating on when I would
10 give this to him were the privileges and required behavior and
11 expected personal responsibilities. I wasn't concentrating on
12 anything else.

13 MS. SAAD: I have no further questions.

14 THE COURT: Any redirect?

15 MR. SIMS: No, Your Honor.

16 THE COURT: The witness may step down. Plaintiff may
17 call his next witness.

18 MR. SIMS: Your Honor, I would like to call Sandy
19 Schmeideknecht, the defendant in this case.

20 MS. SAAD: Your Honor, he has not subpoenaed that
21 witness. She is here as our witness.

22 THE COURT: And?

23 MS. SAAD: Your Honor, she may be in the building,
24 she may not.

25 THE COURT: Well, if she's in the building, where

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1 would she be?

2 MS. SAAD: Your Honor, we can go look.

3 THE COURT: Thank you.

4 THE CLERK: If you could come up here first and state
5 and spell your name for the court reporter.

6 THE DEFENDANT: Yes, Sandra Jane Schmeideknecht,
7 S-c-h-m-e-i-d-e-k-n-e-c-h-t.

8 THE CLERK: Please raise your right hand.

9 **SANDRA JANE SCHMEIDEKNECHT, DEFENDANT, SWORN**

10 DIRECT EXAMINATION

11 BY MR. SIMS:

12 Q. Good morning.

13 A. Morning.

14 Q. Ma'am, my name is David Sims and I've asked to question
15 you here today.

16 Would you tell the court your full legal name, please.

17 A. Sandra Jane Schmeideknecht.

18 THE COURT: Would you pull that microphone a little
19 closer to yourself so we can hear you?

20 THE WITNESS: Is that better?

21 THE COURT: Yes, thank you.

22 Q. And, Ms. Schmeideknecht, did I pronounce that correctly?

23 A. Close.

24 Q. Close? May I call you Sandy?

25 A. Yes, you may.

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1 Q. Thank you.

2 Sandy, what is your current occupation?

3 A. I am a certified life coach.

4 Q. A suicide life coach?

5 A. No, a certified --

6 Q. Certified life coach.

7 A. -- life coach.

8 Q. I'm sorry. How long have you been a certified life coach?

9 A. Approximately since 2008 or '6, I'm not really sure of the
10 exact year.

11 Q. Where are you employed?

12 A. I work with Q&A Associates.

13 Q. Are you an employee of that company?

14 A. I'm a contract employee.

15 Q. And you have a written employment agreement or contract?

16 A. Yes, I do.

17 Q. Does it have binding arbitration as a clause in it?

18 A. I don't recall. I would have to look at it and see.

19 Q. Now, tell me, if you would, what you told Evan Harris
20 about the binding arbitration agreement that's contained in the
21 contract at issue in this case.

22 A. I explained to him that this was a -- an agreement that in
23 the event that there was a dispute of any kind, that he would
24 not go to court or his family would not go to court, but
25 instead go in front of an arbitrator. And that arbitrator

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1 would listen to both sides and make the decision.

2 Q. And was that the extent of what you told him about the
3 arbitration agreement?

4 A. As I recall, yes.

5 Q. Now, you signed an affidavit in this case, have you not?

6 A. Yes.

7 Q. And your affidavit was in response to or as a part of the
8 documents submitted to the Court to compel binding arbitration?

9 A. Yes.

10 Q. And it says that you -- the application information, form
11 contract were provided to the parents of Evan Harris prior to
12 his arrival at Q&A Associates?

13 A. Yes.

14 Q. Did you provide that to them?

15 A. No, our admissions director did.

16 Q. Okay. So is the admissions director here today to testify
17 that she sent these documents to the Harrises before?

18 A. Yes.

19 Q. And who is that person?

20 A. Audrey Peavey.

21 Q. And so Audrey Peavey told you that she sent all these
22 documents to Evan Harris's parents prior to that, prior to his
23 admission?

24 A. Yes.

25 Q. And so that's why that's in your affidavit?

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1 A. Yes.

2 Q. Was the document at issue in this case, the contract, the
3 binding arbitration agreement, was it signed by Evan Harris?

4 A. Not initially, no.

5 Q. Okay. And tell the Court, if you would, when that
6 document was presented to Evan to sign.

7 A. I don't know exactly when it was presented to him because
8 there was emails pertaining to that, where it was sent out
9 where he was to fill out the paperwork, where he previously
10 was. But I provided him that when I saw him, I believe it was
11 on the 20th of November. That's when I went over that with
12 him.

13 Q. Is that the normal process at Q&A, that the life skills
14 coach would present legal documents to applicants and have them
15 sign that?

16 A. I review and go over -- yes, if they have not signed it
17 prior to enrollment, then I go over that. And then if they
18 have signed it, I go over the release of information to be sure
19 that they are okay with the people listed.

20 Q. Who was listed as authorized to release information to
21 about Evan? Who did he tell you, I'm allowing you to share
22 information with these people?

23 A. Well, it appears as if his mother wrote it in, and I just
24 asked him if these were okay. I believe it was Dr. Pelts, and
25 there were two others. And without seeing it, I don't -- I

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1 don't recall.

2 Q. So it's your sworn testimony today that if the documents
3 are not signed before the student or the applicant gets there,
4 you go over it with them and have them sign it?

5 A. Yes.

6 Q. That's not somebody else's job?

7 A. No.

8 Q. It's not the admissions counselor's job?

9 A. No.

10 Q. It's your job?

11 A. Yes.

12 Q. Now, where is your office in relationship to where the
13 students or the participants in the program are?

14 A. My office is in the town of Davis.

15 Q. Where is that in relationship to where Evan Harris would
16 have been?

17 A. Approximately six miles north.

18 Q. Okay. And did you go and see Evan at the location where
19 he was or did he come to see you?

20 A. He came to see me.

21 Q. Who brought him there?

22 A. I do not recall.

23 Q. He couldn't have walked, true?

24 A. Well, he could have, but I don't believe so.

25 Q. Well, how would he have gotten there? Who would have

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1 brought him?

2 A. Probably a mentor.

3 Q. Why did he have to come and see you?

4 A. Because he was coming in to do his initial assessment for
5 life skills.

6 Q. All right. And did you do an initial assessment of his
7 life skills?

8 A. Yes.

9 Q. And what did that reveal?

10 A. I don't have it in front of me, but -- so I can't state
11 specifically.

12 Q. Well, did Evan have trouble understanding the life skills
13 book?

14 A. Well, we didn't go over a book at the time.

15 Q. I understand. But later on.

16 A. Later on?

17 Q. Yes.

18 A. He had some issues with money management was his most
19 significant.

20 Q. Well, what were those issues?

21 A. He liked to spend it as soon as he got it.

22 Q. All right.

23 A. And he didn't see the value in saving.

24 Q. And what did you do to address that as his life skills
25 coach?

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1 A. We worked on the decision-making process and on the
2 importance of budgeting and saving money.

3 Q. Did he have a savings account?

4 A. Yes.

5 Q. As a matter of fact, it was a joint savings account with
6 you and him, was it not?

7 A. It was.

8 Q. And is that the normal process for applicants in the
9 program, participants?

10 A. Yes.

11 Q. So you take them to the bank and establish joint accounts
12 with them?

13 A. Yes.

14 Q. So your name is on it and the applicant's name is on it?

15 A. Yes.

16 Q. Why is that?

17 A. So that when they are discharged, oftentimes they have
18 paychecks that come in after they're discharged or after they
19 leave, or after they decide they are not going to be there
20 anymore, whatever the case may be, and then I can go to the
21 bank. And once all of their paychecks came in, I can obtain a
22 certified check to send to them.

23 Q. So it wasn't to govern his spending, it was to close out
24 the account when he left?

25 A. Pretty much, yes.

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1 Q. Who was present when Evan Harris printed his name on the
2 contract?

3 A. I don't recall specifically.

4 Q. What else did you explain about the agreement, other than
5 the binding arbitration clause, if anything?

6 A. I went through from the top to the bottom. That he was
7 coming into the program voluntarily.

8 I think the second one is the -- to treat in case of an
9 emergency. And I explained that to him, in the event that he
10 was knocked out or unconscious then one of the representatives
11 of Q&A would have the ability to get him to the hospital,
12 provide emergency care until his parents could be reached.

13 I think one of them is search and seizure, meaning that in
14 the event that -- usually that was for home visits. So when
15 they returned, they were -- oftentimes if there was a question
16 that they had some marijuana or other drugs or paraphernalia or
17 alcohol, then we had the right to search. And he understood
18 that.

19 Let me see. Oh, if he left -- if he left the program and
20 wanted to return, that he would bear the cost of us having to
21 go get him. And I can't remember the -- I think.

22 Q. Did Evan ever threaten to sue after he signed this binding
23 arbitration agreement?

24 A. No, not to my knowledge.

25 Q. You're not aware of that?

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1 A. No.

2 Q. Now, as his life skills coach, you did present him with a
3 book, did you not, to read?

4 A. He was given packets. They are packets that he can work
5 through. A book is often overwhelming.

6 Q. And the packet that you gave him, he didn't have the
7 ability to read and understand that packet, did he?

8 A. I don't -- yes, he did. He understood the decision-making
9 process very well. He understood that.

10 Q. You never expressed any concern that he didn't understand
11 what he was reading?

12 A. I don't recall.

13 Q. You don't recall doing that?

14 THE COURT: Mr. Sims, how much longer do we have, do
15 you imagine?

16 MR. SIMS: Maybe 20 minutes, Your Honor.

17 THE COURT: Okay. Well, it's -- we're obviously
18 going to go well into the afternoon in this case, so let's take
19 a break until 1:15.

20 MR. SIMS: Thank you, Your Honor.

21 (Recess taken from 11:59 a.m. to 1:25 p.m.)

22 THE COURT: Be seated, please.

23 MS. SAAD: May I go get the witness, Your Honor?

24 THE COURT: You may.

25 MR. SIMS: I have an exhibit I want to mark, Your

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1 Honor.

2 (Witness resumes the stand.)

3 MR. SIMS: Your Honor, does she have the exhibit?

4 THE COURT: No. Ask the clerk to pass the exhibit to
5 the witness who has retaken the stand and we will continue with
6 direct examination.

7 BY MR. SIMS:

8 Q. Sandy, I have handed you or the clerk has handed you what
9 has been called a contract, medical authorization release and
10 consent agreements. This is the document we were talking about
11 earlier, is it not?

12 A. Yes.

13 Q. And when you were explaining this document to Evan Harris,
14 as you testified earlier, did he ask questions about who his
15 child is?

16 A. Excuse me?

17 Q. The last sentence of the consent to participate says --

18 A. Oh, my child's property or person. No, he did not. I
19 explained that some of our clients are under guardianship.
20 That's why it says my child.

21 Q. So this would have been signed by a parent?

22 A. Yes, if they are under guardianship.

23 Q. Okay. So now with respect to the procedures and policies
24 for safety and well being, who did you tell him was going to be
25 the duly trained designated and supervised personnel to search

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1 his belongings?

2 A. It would be our program director.

3 Q. Did you tell him that person's name?

4 A. Yes, Keith. Uh-huh.

5 Q. And so when you were explaining this to him, you told him
6 this person by the name of Keith, is that Keith Bishop?

7 A. Yes, sir.

8 Q. That he was going to be the one searching his things?

9 A. Yes, if it was necessary.

10 Q. Now, the last sentence of the agreement to arbitrate says,
11 "Instead, all parties accept the use of arbitration as an
12 economical and expeditious way of resolving any disputes."

13 Do you see that?

14 A. Yes.

15 Q. What did you explain -- or did you explain what the word
16 "economical" meant?

17 A. I don't believe I explained economical.

18 Q. Okay. Did you explain to him what the word "expeditious"
19 meant?

20 A. I don't believe so.

21 Q. Ma'am, you have a program -- or Q&A has a program called
22 Best Notes, does it not?

23 A. Yes, it does.

24 Q. And Best Notes permits you to document what you have done
25 on any given day with respect to any given client, does it not?

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1 A. Yes.

2 MR. SIMS: Your Honor, if I may have that marked as
3 Plaintiff's Exhibit 2, please.

4 Q. Ma'am, first of all, is this a document that has your name
5 on it?

6 A. Yes.

7 Q. Would you have been the one who authored it?

8 A. Yes.

9 Q. And you would agree with me, ma'am, that this says "Evan
10 came in and completed his initial assessment."

11 Do you see that?

12 A. May I have a moment to read, please? I don't see that in
13 this one.

14 Q. I'm sorry, did I give you the wrong document?

15 A. I don't know. This is dated December 1st.

16 Q. I'm sorry, I gave you the wrong one.

17 A. Okay.

18 Q. I want to go ahead and use that document.

19 MS. SAAD: Dave, I have this one. You can have this
20 one back.

21 Q. Ma'am, this is Exhibit 3, Plaintiff's Exhibit 3 is the
22 November 20, 2015, note?

23 A. Yes.

24 Q. That you authored as well?

25 A. This is what I -- yeah, may I read it? Uh-huh. Okay.

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1 Q. Ma'am, do you see the first sentence, "Evan came in and
2 completed his initial assessment"?

3 A. Yes.

4 Q. Is that the life skill assessment you were talking about
5 earlier?

6 A. Yes.

7 Q. Ma'am, you would agree with me that this document, this
8 writing documents your conversation with Evan's mother, that
9 she called and that she was concerned that he was not on
10 lithium extended release?

11 A. That's correct.

12 Q. And that he was taking amantadine twice a day --

13 A. Right.

14 Q. -- when he was not supposed to be, correct?

15 A. According to what she said, yes.

16 Q. She gave you her -- Evan's home psychiatrist's contact
17 information?

18 A. That's correct.

19 Q. You said, "I sent him an email with the pharmacy contact
20 information"?

21 A. That's correct.

22 Q. Did you not?

23 A. Yes, I did.

24 Q. And you documented that they could follow by scheduling a
25 conference call or Skype sessions?

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1 A. Yes. But I also sent the information for Dr. Trefzger as
2 well in the event he is not going to follow him, meaning his
3 home psychiatrist.

4 Q. And you documented that Evan's mother really wanted to
5 talk about how she had managed Evan and how difficult it was
6 going to be?

7 A. Yes.

8 Q. And you have a very detailed discussion or recitation of
9 that discussion, do you not?

10 A. Yes.

11 Q. Now, you would agree with me, ma'am, there is not one
12 mention on Exhibit 3 that you went over this contract with Evan
13 Harris, is there?

14 A. No, there is not.

15 Q. You documented everything else that happened during Evan's
16 meeting on that day, except the contract discussion; true?

17 A. Yes; however, the contract is part of my initial
18 assessment when I meet with them.

19 Q. Ma'am, your sworn testimony today is part of the life
20 skills assessment is going over this contract and having them
21 sign it?

22 A. Part of it, if they have not signed it, yes, is going over
23 it and have them sign it. Yes.

24 Q. Why did you not document that?

25 A. Because it was part of the initial assessment with Evan.

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1 Q. Now, the December 1st exhibit, Exhibit 2 --

2 A. Yes.

3 Q. -- you authored this document as well, did you not?

4 A. Yes.

5 Q. And in this document, you state that he struggles with
6 making a plan which he is to work on regarding going home for
7 Christmas.

8 A. Yes.

9 Q. You would agree with me that Evan had difficulty in
10 planning any aspect of his life, did he not?

11 A. No.

12 Q. No, you disagree with that?

13 A. That is correct. I disagree.

14 Q. He just struggled making a plan so he could go home?

15 A. That is not unusual with the clients, all of the clients
16 that I work with.

17 Q. All of them have trouble planning to go home?

18 A. Planning to do anything, yes.

19 Q. Okay. So Evan had trouble planning to do anything as
20 well, did he not?

21 A. As it said, he discussed the challenges of time management
22 through chores. And so I encouraged him to set his alarm and
23 get up half an hour early so he would have plenty of time, so
24 he could eat a good breakfast. I have encouraged him to drink
25 16 ounces of water with each set of pills so they don't settle

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1 in his stomach. His call was uneventful.

2 And then his mother set up that she would call him in the
3 evening after dinner. He struggles with making a plan which he
4 is to work on regarding going home for Christmas. And he
5 explained what his parents said he could or could not do;
6 however, he did turn in a plan for an Xbox that he did not have
7 problems doing.

8 Q. Ma'am, you had to explain to him that he had to set his
9 alarm clock a half an hour earlier --

10 A. It was a suggestion.

11 Q. -- so he could eat breakfast?

12 A. It was a suggestion. And that's not uncommon with all the
13 clients.

14 Q. You have to tell them what time to get up so they can eat
15 breakfast?

16 A. Oftentimes when they first come in, yes. They need
17 assistance and support in getting up in a timely manner, yes.

18 Q. All right. The life skill assessment --

19 A. Uh-huh.

20 Q. -- is that a handwritten document like this one?

21 A. That -- I can't see quite that far, but if it's a
22 handwritten part that has goals --

23 Q. Yes.

24 A. -- then that would be the part that is what Evan would
25 list as his goals, short-term, medium-term, long-term.

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1 Q. All right.

2 MR. SIMS: If you would mark that as Plaintiff's
3 Exhibit 4, please.

4 Q. Ma'am, is that the life skill assessment completed by Evan
5 Harris?

6 A. Yes.

7 Q. If you look at the second page, under faiths or beliefs?

8 A. Yes.

9 Q. There is a question, "What is your faith or belief?" What
10 did Evan write?

11 A. Both.

12 Q. Is that an answer that was responsive to the question?

13 A. Yes, it could be. He could have a faith or a belief and
14 it would be two different things.

15 Q. The question is, "What is your faith or belief?" And he
16 wrote the word "both"?

17 A. Correct.

18 Q. So explain to me how that was a logical response to that
19 question.

20 A. Because he could have a faith or a belief. And he
21 responded he had both.

22 Q. The third question is, "What things do you believe that
23 give meaning to your life?" And he wrote "friends and home"?

24 A. Yes.

25 Q. Under the next section, "Is it important in your life?"

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1 He writes, "friends and home" again, correct?

2 A. Uh-huh, friends and home are important to his life, yes.

3 Q. "Have your beliefs influenced your behavior?" What did he
4 write?

5 A. "Some."

6 Q. Is that an appropriate response to that question?

7 A. Yes.

8 Q. Under Community, "Is there a person or group of people you
9 really love or are really important to you?" What did he
10 write?

11 A. "No."

12 Q. "How would you like me, your life coach, to address these
13 issues?" What did he write?

14 A. Question mark. That's not uncommon.

15 Q. So based upon his answers to these questions on the second
16 page of this exhibit, you believed he was providing normal
17 responses to a life skill assessment that you would expect and
18 receive from other program participants just like Evan?

19 A. Yes. This is a spiritual assessment. This is not a life
20 skills assessment. This is a spiritual assessment.

21 Q. Okay. On the next page, on the life skill assessment --

22 A. Yes.

23 Q. -- with respect to, "I know the products to use when
24 cleaning the kitchen and the bathroom" --

25 A. Just a moment.

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1 Q. He told you he didn't know what products to use, correct?

2 A. I'm not on that page. What number?

3 Q. It's --

4 A. Here it is.

5 Q. 110, the next-to-the-last thing on the list.

6 A. 110. Here it is. That's correct. That also is not
7 uncommon.

8 Q. "I know how to use a fire extinguisher," he said "no,"
9 correct?

10 A. That's correct. That's not uncommon.

11 Q. When he was asked about where he could get help with his
12 income tax, he told you he didn't know, correct?

13 A. That's correct. That's not uncommon.

14 Q. When he was asked where he could get tutoring or other
15 help with his school work, he told you he didn't know where to
16 do that either?

17 A. That is correct. And that is often the initial answer.

18 Q. He didn't understand on housing and market management --
19 money management, I mean, he didn't understand interest rates.
20 He didn't understand the disadvantages of making purchases on a
21 credit card. He didn't understand anything on that page except
22 "I put money in my savings account when I can," and he put --
23 checked "somewhat." And "I use online banking to keep track of
24 my money."

25 A. Correct. That is --

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1 Q. Everything else he didn't know anything about it, did he?

2 A. That's not uncommon with the clients that I work with.

3 Q. So how did Evan do with his life skill assessment?

4 A. This isn't to judge how he did. It is to assess where he
5 needs to focus to begin with his curriculum.

6 Q. Okay. So what curriculum was he going to be placed in?

7 A. The first curriculum is the decision-making process.

8 MR. SIMS: Plaintiff's Exhibit 5, please.

9 Q. Ma'am, is that another document you created, Plaintiff's
10 Exhibit 5?

11 A. Uh-huh, yes.

12 Q. Do you remember me asking you earlier if Evan ever had any
13 trouble understanding his life skills book?

14 A. It is not a book. It is a --

15 Q. Okay. He didn't understand his life skills packet?

16 A. Right.

17 Q. And what did you write on that day, five days into the
18 program?

19 A. This was that he did complete the first chapter on making
20 a decision, but we are going to move into an easier curriculum
21 as he has limited vocabulary and understanding.

22 Q. So you recognized five days into the program that he had a
23 limited vocabulary and a limited understanding of basic life
24 skills, true?

25 A. The initial making decision is at a college level, and

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1 I -- he had difficulty with that, but he did understand
2 English. He just had a limited vocabulary but was able, once
3 it was chunked down, he was able to understand it. So he
4 wouldn't become frustrated, we went to an easier curriculum for
5 him.

6 Q. And you went to an easier curriculum because he wasn't
7 capable of understanding the curriculum you had given to him,
8 correct?

9 A. Not independently, but he was when it was explained.

10 Q. When you were explaining the arbitration agreement to him,
11 did you tell him he had to go to McLean, Virginia, to arbitrate
12 his case?

13 A. I read what the arbitration statement said and then
14 explained it to him. Not where he was going, no, I did not.

15 Q. Did he ask you, how am I to get to McClain, Virginia?

16 A. No.

17 Q. Did he ask you where it is?

18 A. No.

19 Q. He didn't have any questions about it, did he?

20 A. No.

21 MR. SIMS: Your Honor, that's all the questions I
22 have of this witness.

23 THE COURT: Cross-examination/direct examination.

24 MS. SAAD: Got it.

25 THE COURT: Short break.

SANDRA SCHMEIDEKNECHT - CROSS

1 (Recess taken from 1:47 p.m. to 1:50 p.m.)

2 CROSS-EXAMINATION

3 BY MS. SAAD:

4 Q. Okay. Sandy, you've gone through a little bit of your
5 background, but I do just want to touch on it a little bit
6 further.

7 You have been with Q&A Associates since its inception; is
8 that correct?

9 A. That's correct.

10 Q. And tell me a little bit about what kind of program is Q&A
11 Associates?

12 A. Q&A Associates is best described as a community-based life
13 skill model program for young adults needing assistance in
14 developing independent living skills.

15 Q. And is it a mental health facility?

16 A. No.

17 Q. Is it a lockdown facility?

18 A. No.

19 Q. I think you just called it a community-based facility; is
20 that correct?

21 A. It would be a community-based program.

22 Q. And I'm sorry, you know, I do a lot of other nursing home
23 work. I call everything facilities nowadays so I'm sorry, this
24 program. And tell me, why is it considered a community-based
25 program?

SANDRA SCHMEIDEKNECHT - CROSS

1 A. Because we use all of the available assets within the
2 community to help support the clients.

3 Q. And do the clients live in a community together?

4 A. Yes, they live in a home.

5 Q. Okay. And so Evan Harris, was he part of a home?

6 A. Yes. He lived in a house with the rest of the boys.

7 Q. And what is that basically, is that a cabin or a
8 farmhouse?

9 A. Farmhouse.

10 Q. Okay. And they learn what kind of skills living in that
11 home?

12 A. They live normal activities of daily living. They learn
13 how to take care of themselves. They learn how to take care of
14 their environment. They learn cooking, they learn cleaning.
15 They learn relationships, about relationships and building
16 relationships. They learn how to manage their money. We do it
17 in a classroom setting and then it is put into practical
18 experience.

19 Q. What about job skills?

20 A. Oh, yes, I'm sorry, job skills. Interviewing, how to
21 dress appropriately.

22 Q. Do they hold jobs typically when they are at Q&A?

23 A. Yes.

24 Q. And your background, just briefly, your educational
25 background, what was your first degree that you obtained?

SANDRA SCHMEIDEKNECHT - CROSS

1 A. I had a diploma as a licensed practical nurse and then I
2 went on to get my associate's degree in nursing. And then I
3 went on afterwards to get a bachelor's in multidisciplinary
4 studies. It was Christian counseling, business, and nursing.
5 I went and got a master's in human services, marriage and
6 family, and I am presently enrolled, working on my doctorate in
7 education.

8 Q. Good for you. Do you hold any other certifications or
9 certificates?

10 A. Yes, I have a certificate as a certified life coach, as a
11 certified professional coach, as a certified addiction recovery
12 coach. And multiple other certificates.

13 Q. Okay. There's been some discussion about your
14 interactions with Evan Harris. And you know who I speak of
15 when I talk about Evan Harris, right?

16 A. That's correct.

17 Q. There's been some discussion about the initial assessment
18 that you completed with him; is that correct?

19 A. Yes.

20 Q. And did you do the initial assessment on the first day
21 that he came to Q&A?

22 A. No.

23 Q. And why is that?

24 A. Give him time to settle in and get accustomed to the
25 environment and calm down and be more ready to be able to sit

SANDRA SCHMEIDEKNECHT - CROSS

1 and answer questions.

2 Q. And Mr. Sims showed you some of the things that Evan
3 Harris stated in his life skills that he can't do, but he
4 didn't really bring up anything that he can do in those --
5 checked in those boxes --

6 A. That's correct.

7 Q. -- in the life skills?

8 A. That's correct.

9 Q. And you kind of answered frequently that this is not
10 uncommon for clients. And in fact, being able to clean a
11 bathroom or know where to take your taxes to be done, would it
12 be uncommon for any 18 or 24 year old to not know answers to
13 all of the things like that?

14 A. No, it would not be uncommon.

15 Q. And the initial assessment included some paperwork,
16 including a contract, you reviewed in detail with Mr. Sims.

17 Do you remember that?

18 A. Yes.

19 Q. And he asked you some questions about insisting whether
20 you actually reviewed this contract with Evan Harris.

21 Do you remember that?

22 A. Yes.

23 Q. As part of your -- at Q&A, who does the initial
24 assessment?

25 A. I do.

SANDRA SCHMEIDEKNECHT - CROSS

1 Q. You do all of them, right?

2 A. That's correct.

3 Q. And so you are familiar, you are able to rattle off every
4 provision of that contract because you review it every time
5 that a new client comes in; is that correct?

6 A. That's correct.

7 Q. So you were comfortable reviewing the arbitration
8 agreement with Evan Harris?

9 A. Yes, I was.

10 Q. I think that was marked -- I think it was marked as one of
11 the plaintiff's exhibits, I think it was Plaintiff's Exhibit
12 Number 1, was the contract, medical authorization release and
13 consent agreement --

14 A. Uh-huh.

15 Q. -- that we were just discussing, this contract agreement.
16 Do you have that in front of you?

17 A. Yes, I do.

18 Q. And you've already testified that you explained the
19 arbitration agreement in simple terms; is that correct?

20 A. That's correct.

21 Q. And you verbally asked Evan Harris whether he understood;
22 is that correct?

23 A. That's correct.

24 Q. And you gave him an opportunity to ask questions; is that
25 correct?

SANDRA SCHMEIDEKNECHT - CROSS

1 A. That's correct.

2 Q. Now, when you were doing an initial assessment, what are
3 you looking for in the client's demeanor when you're going
4 through both the contract or any of the life skill plans?

5 A. They are very detail oriented. They are calm. They are
6 able to understand the English language and be able to answer
7 the questions. If they have trouble with that, then we'll --
8 we can use a different assessment. But he did, as I saw,
9 pretty well and pretty normal responses on the -- on this one.

10 Q. If someone, if a client showed signs of distress or signs
11 of confusion, would you have that person sign an agreement?

12 A. No.

13 Q. So it's important to you that they are in the right frame
14 of mind when you're going through this information and
15 particularly this agreement with the clients?

16 A. That's correct.

17 Q. When a client comes into Q&A, is it typical that you
18 would -- you would inquire or you would know if a client had a
19 conservatorship or some other legal guardian?

20 A. Yes.

21 Q. And if that client had a conservator or other legal
22 guardian, would you have that individual, that client sign this
23 contract?

24 A. No.

25 Q. As far as were you ever informed by Evan's parents, either

SANDRA SCHMEIDEKNECHT - CROSS

1 Dr. Harris or Ms. Kathy Harris, that Evan Harris in fact was
2 not competent, did they ever tell you that?

3 A. No.

4 Q. And as far as you knew, he was a over 18 year old
5 competent adult; is that correct?

6 A. That's correct.

7 Q. And he appeared to understand at the time of the signing
8 of the contract the contract as was described in simple terms
9 by you?

10 A. That's correct.

11 Q. There's one other document that wasn't discussed in much
12 detail. It is the second page of Plaintiff's Exhibit Number 1.

13 A. Uh-huh, yes.

14 Q. That is the -- this is the release of information form.
15 Do you have that in front of you?

16 A. Yes, I do.

17 Q. There was some discussion about whether you had reviewed
18 this with Evan Harris. And did you review it with Evan Harris?

19 A. I did.

20 Q. And, in fact, you reviewed each of the authorized persons
21 for that release of information; is that correct?

22 A. That's correct.

23 Q. And when you received -- when you received both the first
24 page of Plaintiff's Exhibit 1 and the second page of
25 Plaintiff's Exhibit 1, they had portions of them completed; is

SANDRA SCHMEIDEKNECHT - CROSS

1 that correct?

2 A. That's correct.

3 Q. And on the first page, what portion was completed when you
4 got this document?

5 A. The participant's full name, date of birth, social
6 security number.

7 Q. And is it your understanding that this top portion was
8 completed by Evan's parents and then provided to Q&A?

9 MR. SIMS: Objection. Calls for speculation.

10 THE COURT: Overruled. If she knows.

11 A. Yes.

12 Q. And what about the second page. Was this also
13 completed -- tell me -- I'm sorry. This second page, what
14 portions were completed when you received this document, the
15 release of information?

16 A. Everything was completed. The name of the three people
17 and their contact information. And that the date had been put
18 in as of 10/29/15, and Evan Harris was printed in. And then
19 all of the bottom part, which has the name, the cell numbers,
20 social security, and you'll see the insurance information.
21 That was all filled in.

22 Q. What about the signature of participant line, was that
23 completed?

24 A. No, it was not.

25 Q. And what about on this contract page, similarly, on the

SANDRA SCHMEIDEKNECHT - REDIRECT

1 bottom of this contract, was this signature for participant
2 line completed?

3 A. Not prior to meeting with him.

4 Q. When you met with Evan Harris, you reviewed these two
5 documents and had him sign them in your presence?

6 A. That's correct.

7 Q. After you obtained, sufficient for you, a belief that he
8 understood those documents and his verbal acknowledgment that
9 he understood those documents?

10 A. That's correct.

11 MS. SAAD: I don't have any further questions. Thank
12 you.

13 THE COURT: Any redirect?

14 MR. SIMS: Just briefly, Your Honor.

15 REDIRECT EXAMINATION

16 BY MR. SIMS:

17 Q. Sandy, did you have the 24-page document prepared by Kevin
18 Fenstermacher, Ph.D., the psychological evaluation that was
19 done on Evan before he arrived?

20 A. If it was sent prior to then I would have, yes.

21 Q. Do you have any recollection of reading it?

22 A. I read all of them, but I don't have a specific
23 recollection of his.

24 Q. Do you know if Dr. Fenstermacher believed that Evan was
25 competent or not?

SANDRA SCHMEIDEKNECHT - REDIRECT

1 A. I do not know.

2 Q. Is it your sworn testimony that you read

3 Dr. Fenstermacher's report prior to the time you had Evan sign
4 this agreement?

5 A. If it came in prior to his enrollment, I would have read
6 it.

7 Q. Now, going back to Plaintiff's Exhibit 1, whose
8 handwriting is it for the 11/20/15?

9 A. That is mine.

10 Q. And is that the same on page 13, the second page by Evan's
11 signature, 11/20/15?

12 A. Yes.

13 Q. Did you tell Evan he needed to put a date?

14 A. Yes, I said you need to put a date.

15 Q. He didn't do it, did he?

16 A. No. That's not uncommon either.

17 Q. Well, I want to ask you some questions about common.

18 A. About what?

19 Q. The word common. You've used that word a lot today.

20 A. Uh-huh.

21 Q. And I want to know, was Evan a common person in your
22 programs or was Evan a common person in the world?

23 A. I can't answer about the world.

24 Q. You don't --

25 A. I can answer that he had similar challenges with different

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1 parts of basic life skills as is common with the clients who
2 come to our plan to learn those life skills.

3 Q. Did you determine him to have a learning disability?

4 A. Yes.

5 MR. SIMS: Your Honor, that's all the questions I
6 have.

7 MS. SAAD: Nothing further, Your Honor.

8 THE COURT: You may step down. May the witness be
9 excused?

10 MS. SAAD: Yes, Your Honor.

11 MR. SIMS: Yes, Your Honor.

12 THE COURT: Thank you.

13 MR. SIMS: Your Honor, I would move for the admission
14 of Plaintiff's Exhibit 1 through 5.

15 MS. SAAD: No objection. While we're clearing that
16 up, can I move for the admission of Defendants' Exhibit B,
17 please.

18 MR. SIMS: No, Your Honor.

19 THE COURT: Plaintiff's Exhibits 1 through 5 and
20 Defendant's Exhibit B will admitted into evidence.

21 (Plaintiff's Exhibits 1 - 5 and Defendants' Exhibit B
22 were admitted.)

23 MR. SIMS: Your Honor, my next witness is Dr. Paul
24 Pelts, M.D.

25 THE COURT: Are you still planning on calling

PAUL GERARD PELTS - DIRECT

1 Mrs. Harris?

2 MR. SIMS: In all honesty, Your Honor, probably not.
3 But I don't want to commit myself to saying no and my need to
4 call her. But my honest assessment right now is I will not be
5 calling her.

6 THE COURT: Well, I'm not the one that has to deal
7 with her for leaving her out in the hall.

8 MR. SIMS: I understand, and I will take
9 responsibility for that, Your Honor.

10 THE COURT: All right.

11 THE CLERK: Please state and spell your name for the
12 court reporter first.

13 THE WITNESS: Paul Gerard Pelts.

14 **PAUL GERARD PELTS, PLAINTIFF WITNESS, SWORN**

15 **DIRECT EXAMINATION**

16 BY MR. SIMS:

17 Q. Good afternoon, Doctor. Would you tell us your full legal
18 name, please.

19 A. Paul Gerard Pelts.

20 Q. And, Dr. Pelts, what do you do for a living, sir?

21 A. I am an adult, child and adolescent psychiatrist in
22 private practice in New Orleans.

23 Q. And, sir, tell me, if you would, what's your business
24 address?

25 A. It is 1539 Jackson Avenue, Suite 300, New Orleans,

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1 Louisiana, 70130.

2 Q. And tell us, if you would, where did you obtain your
3 education to be a child, adolescent and adult psychiatrist?

4 A. I attended undergraduate medical school at the University
5 of Missouri in Kansas City. I did a fellowship in general
6 adult psychiatry at Ochsner Medical Foundation in New Orleans.
7 And I did a child and adolescent fellowship at Tulane
8 University Medical Center in New Orleans.

9 Q. Tell the Court, if you would, what the importance of doing
10 a fellowship is in that field.

11 A. The importance is understanding the things that are very
12 different between adults and children, developmental
13 perspectives, diagnoses that are more inherently common or
14 peculiar to children and adolescents, and the treatment and
15 treatment modalities which can be very different as well.

16 Q. Sir, if you would, after you completed your fellowship
17 training in adolescent psychiatry, where did you begin
18 practicing?

19 A. I began as the director of the child and adolescent
20 neuropsychiatric unit at Tulane University Hospital for
21 Children.

22 Q. How long were in that role?

23 A. I was in that role approximately probably about four to
24 five years.

25 Q. And what did you do after completing that task, that job?

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1 A. I went on to become the medical director of Tulane
2 DePaul's inpatient psychiatric unit. And then I was the
3 director of their adolescent unit after that.

4 Q. After that job, what did you do next?

5 A. I went to private practice for a not-for-profit hospital
6 group, Mercy Family Center, seeing primarily children and
7 adolescents for evaluation and psychiatric treatment.

8 Q. After completing that job, what did you do?

9 A. I've been in private practice in a group practice for the
10 last 11 years. Psychiatrists, psychologists, social workers
11 and one art therapist.

12 Q. Are these people that work in your practice your
13 employees?

14 A. They are not my employees. They work -- they rent office
15 space and we have a cooperative practice.

16 Q. All right. And do you have experience in assessing people
17 like Evan Harris?

18 A. Much of the work that I do does primarily center around
19 children and adolescents with developmental disabilities,
20 including autistic spectrum disorder. Also intellectual
21 disabilities, attention deficit hyperactivity disorder and mood
22 disorders.

23 Q. Have you testified as an expert witness in other cases?

24 A. Yes, I have.

25 Q. Have you ever not qualified as an expert witness?

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1 A. No, I have not.

2 MR. SIMS: Your Honor, at this time I would move to
3 treat Dr. Pelts as an expert witness in the field of adolescent
4 and adult psychiatry.

5 THE COURT: Voir dire?

6 MR. JONES: No objection, Your Honor. No voir dire.

7 THE COURT: All right. Dr. Pelts will be able to
8 give opinion testimony in the fields of adolescent and adult
9 psychiatry.

10 MR. SIMS: Thank you, Your Honor.

11 Q. Dr. Pelts, if you would tell us about when you first met
12 the Harris family?

13 A. The Harrises originally consulted with me in September of
14 2006. That was an initial meeting with Evan's parents, Dr. and
15 Mrs. Harris.

16 Q. And tell the Court, if you would, what took place during
17 that meeting, what the concerns of the Harrises were.

18 A. The Harrises expressed a variety of concerns that Evan was
19 experiencing, primarily anger and frustration that at times
20 would become physical as things escalated.

21 He was also having some difficulty with impulse control,
22 mood fluctuation, that would fluctuate somewhere between him
23 being euphoric, overly happy and angry. He would perseverate
24 or get fixated on things and was not be able to unstick from
25 that.

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1 He was having difficulty missing social cues and also was
2 having, at times, some delusional thinking or some thinking
3 that did not appear congruent with the situations.

4 Q. Did you immediately begin caring for Evan after this
5 meeting with the Harrises?

6 A. No, I did not. There was a lapse between that meeting and
7 the next time I met with the Harrises.

8 Q. And tell the Court, if you would, what the reason for that
9 delay was.

10 A. Evan had been admitted at a residential treatment
11 facility, Three Springs, I believe very shortly after I had met
12 with them. And I did not have contact with them again until
13 shortly after Evan was discharged from that program.

14 Q. Now, as Evan's treating psychiatrist, did you have access
15 to his earlier mental health treatment?

16 A. Yes, in a variety of ways. The first was by some initial
17 assessment that the parents had filled out, which is in the
18 chart. The other part is just doing a standard psychiatric
19 history, asking questions about development, previous symptoms,
20 previous treatments. And also they had allowed me access to
21 any records that I had needed or wanted as we began the
22 process.

23 But I think it's very important to understand that a lot
24 of times when parents come to see me initially, it is as much a
25 meet and greet as anything else from the perspective of they

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1 are getting to meet me, get to know me a little bit, see if
2 they feel like we can work together. I'm also starting to
3 formulate some history, as was in the case of Evan, very, very
4 complicated and lengthy. So at that point when the Harrises
5 and I met back in September of 2006, we just began to discuss a
6 lot of the parts of the history.

7 Q. You heard Dr. Harris testify today about the mother
8 being -- having mental illness?

9 A. Yes.

10 Q. Is that consistent with your records?

11 A. Per my notes, my understanding was that the mother had
12 been previously diagnosed with bipolar disorder, that she had
13 committed suicide, and that she had used, I believe, drugs
14 during the pregnancy.

15 Q. And what about the biological father?

16 A. My understanding was that he had been incarcerated either
17 for murder or for some other violent act.

18 Q. And did you -- do you know Dr. Perdigao, Evan's initial
19 psychiatrist?

20 A. Yes, I do know him.

21 Q. And did you have access to what Dr. Perdigao had done in
22 terms of care and treatment of Evan Harris?

23 A. Only -- only by description from what the parents had told
24 me at that point. And they had also told me that I was welcome
25 to talk with Dr. Mark Sands, who had been Evan's psychiatrist

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1 for many years. And I had known Dr. Sands because we had
2 worked together previously as well.

3 Q. And how often was Evan seeing Dr. Perdigao?

4 A. I believe, per my notes, he was seeing Dr. Perdigao up to
5 three times per week when he was six years old.

6 Q. Is that uncommon for -- in the field of adolescent
7 psychiatry?

8 A. Maybe not 30 years ago, but it is highly uncommon in the
9 last ten to 20 years that any person, especially a child of
10 that age, would be seen with that frequency.

11 Q. And was Evan hospitalized during this initial time period
12 after September the 6th of 2006?

13 A. Well, Evan, as I understood it, per my history, had two
14 previous psychiatric hospitalizations. And those were at San
15 Marcos in Texas. And I don't have the exact dates of those.
16 But I think one was for five weeks' duration, yet again, that
17 would be a very lengthy hospitalization during that time. And
18 then he had the stint at Three Springs in Tennessee, which was
19 a residential treatment facility.

20 Q. And when you first assessed Evan, did you come up with a
21 diagnosis of his mental health condition?

22 A. It was very unclear to me when I started working with Evan
23 what exactly the diagnoses were. And there were several
24 problems with that. The first problem is just as a child
25 psychiatrist in general, things are not always very clear cut

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1 and we're hesitant to give labels for fear that once you give a
2 child a diagnosis or label, it's very hard to take that away.

3 But certainly it was -- it became increasingly clear as I
4 worked with Evan. Initially I didn't get to see Evan as often.
5 That he had some intellectual disabilities. That certainly
6 there was a great deal of difficulty with attention, focus,
7 concentration impulse control. And that also there were
8 difficulties with mood fluctuation, aggression and anger.

9 Q. And did you prescribe medications to address these mental
10 health concerns?

11 A. I did.

12 Q. And --

13 A. Some of those medications were simply the ones that
14 Dr. Sands had originally prescribed. Certainly after I got to
15 see Evan, they were looking at schools for him so he was not
16 there all the time.

17 We had several hospitalizations. We were working somewhat
18 on the medication, to be honest with you. It was not really
19 until Evan got totally out of control, and that was back in
20 August of 2009, and he was immediately hospitalized in New
21 Orleans for a brief stay at River Oaks Hospital. And I had
22 spoken with Dr. and Mrs. Harris, and had also spoken with the
23 attending physician at the hospital in New Orleans, because
24 they are only a short-term facility, about a longer
25 hospitalization at Meridell Achievement Center in Texas.

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1 Q. And did he end up going to Meridell?

2 A. He did.

3 Q. And how long was he at Meridell?

4 A. I would have to look back through the chart, but he was
5 there several weeks.

6 Q. Okay. And after you began seeing Evan, was he sent, for
7 instance, to Bachman Academy?

8 A. Yes, he was going to Bachman Academy. He was coming home
9 periodically and I would see him. And then as Dr. Harris
10 explained after he got home, there was the arduous task of
11 trying to find a job.

12 Q. And you have records in your file, do you not, about the
13 efforts that were made to assist Evan in finding work?

14 A. Yes.

15 Q. From Dr. -- from Mr. Schiro?

16 A. Yes. And I was originally contacted regarding my opinions
17 about that. He was allowed into the program through LRS. They
18 began trying to help find a job. And most of those programs
19 are really programs, as was described earlier, where a business
20 is paid a set amount of money to allow that person to come work
21 with very close supervision and -- a job coach, so to speak,
22 with the hopes that they will ultimately learn the skills to be
23 able to procure more full-time employment.

24 Q. There's been testimony that Evan graduated from Bachman
25 Academy. What is your understanding of what Bachman Academy is

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1 about and how did you obtain that understanding?

2 A. The day that Evan graduated from Bachman Academy was a
3 very happy day. I was very proud of Evan for finishing the
4 program there, but it was not a traditional college prep
5 program where he was studying the ordinary courses that one
6 would study on an academic-based way, more of a vocational
7 program working on practical skills. And so it was not really
8 the academic rigor that one might talk about as they were
9 discussing having completed a traditional high school.

10 Q. After Bachman, did Evan begin working with the Rouses?

11 A. Yes.

12 Q. And tell the Court, if you would, who those people are and
13 why they do what they do.

14 A. Rouses Grocery Store was originally formed out of a single
15 store in Thibodaux, Louisiana, and they quickly become the
16 number one local grocery store in southern Louisiana. They
17 have a reputation for being very locally based and they try
18 very hard to work with and employ people with intellectual or
19 developmental disabilities and work with programs such as the
20 LRS program in trying to help teach job skills.

21 Q. And was Evan ever able to maintain that job?

22 A. He started out, per my understanding, relatively well.
23 Like so many things, unfortunately, for Evan did, that it
24 quickly unraveled. And I think part of that was Evan was
25 having interpersonal difficulties with another one of the

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1 employees at work. I recall that there was a change of
2 management at work.

3 And the other thing that I -- this is my personal opinion,
4 I think without Evan having direct constant one-on-one
5 supervision, things frequently would go downhill. I mean, I
6 think if someone were there constantly reminding him what he
7 needed to do, he could be successful with it. But the moment
8 someone looked away, the moment the management changed -- and
9 also Evan, whether he was working at Rouses Grocery Store or in
10 my office, he had to test limits. You know, he had -- if I
11 asked him not to do something, he had to do it anyway, he had
12 to see if I really meant it. Things were a constant battle
13 with Evan, even on a good day, even about the simplest of
14 things.

15 Q. Now, you heard Dr. Harris testify about work he had gotten
16 for his son volunteering at the hospital.

17 A. Yes.

18 Q. And was he able to maintain that work?

19 A. No.

20 Q. Are you aware of any employment that Evan was able to
21 maintain for any length of time?

22 A. No.

23 Q. After Evan became an adult, did you then diagnose him or
24 make a diagnosis regarding his mental health?

25 A. Well, as time went by, things began to become a little bit

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1 more clear. And one of the things that was especially
2 helpful -- and I want to backtrack just a minute. Evan had had
3 some previous psychological, psychoeducational evaluations, I
4 believe, they may even be here in my chart. But one of the
5 difficulties with doing those assessments, when people are very
6 young or when they have intellectual disabilities, is the data
7 or the information that you might get may not be valid.

8 And so it was not until he had the evaluation that was
9 done while he was at Aspiro that I thought we really got a very
10 good read, psychologically, diagnostically on Evan. And part
11 of the reason is not that there weren't good psychologists in
12 New Orleans who had attempted to evaluate Evan before. Evan
13 was frequently not cooperative with that process. And I would
14 challenge anyone in here, if you've ever been through that
15 process of sitting in a chair and have someone give you tests
16 for six or eight or ten hours straight, it's an arduous
17 process.

18 And that's why I was so pleased that Dr. Fenstermacher was
19 actually able to engage Evan and do a complete
20 psychoeducational evaluation back in October of 2015.

21 Q. Is it your understanding that that evaluation was
22 completed because Q&A insisted upon it?

23 A. I'm not really clear.

24 MS. SAAD: Objection. I think that's calling for
25 speculation and hearsay.

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1 A. I'm not really clear.

2 THE COURT: Overruled. He's answered.

3 Q. Dr. Fenstermacher saw Evan on what date?

4 A. I believe the evaluation was on October 13th of 2015.

5 Q. And the report has a date of November 4, 2015, does it
6 not?

7 A. Yes, it does.

8 Q. The report that Dr. Fenstermacher authored, it's 24 pages,
9 correct?

10 A. Yes.

11 MR. SIMS: That's Plaintiff's Exhibit 6, please.

12 Q. Sir, do you have the report?

13 A. Yes, I do.

14 Q. If you would, tell the Court what the purpose of doing
15 these evaluations is and what information Dr. Fenstermacher was
16 able to elicit from the psychological testing he performed on
17 Evan?

18 A. Certainly. The first thing I would like to say is I don't
19 actually perform this type of evaluation, but I'm very familiar
20 with them because I do have colleagues that I would call on to
21 do one of these evaluations, and I would rely on the
22 information that they provided to help me in treatment.

23 Generally, the evaluation consists of interviewing the
24 individual, depending upon the age or the developmental issues
25 with that individual, interviewing the parents. Reviewing any

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1 old records or previous treatments. Engaging in an
2 intellectual or what we would call a cognitive assessment.
3 Intelligence.

4 The second part, depending, would be looking at things
5 from a psychological or psychiatric perspective, as far as
6 other diagnoses.

7 The third part would be, if there's any question about
8 intelligence, doing adaptive functioning scales as well that
9 would help with an understanding. Because the current belief
10 is if you're looking at an intellectual disability, in the old
11 days, you simply would assess someone's IQ, their intelligence.
12 But these days, it's a much more complicated process of not
13 only looking at intelligence, but also looking at their
14 adaptive functioning.

15 Q. Now, when you talk about an intellectual disability, is
16 that a relatively new term?

17 A. Yes. More common terms that some of us still interchange
18 or use would be things like mental retardation would have been
19 the older term, which is still used but because of federal law,
20 that was kind of struck down. Intellectual disability would be
21 a much more common, or an intellectual developmental disorder.

22 Q. In your opinion, to a reasonable degree of medical
23 probability, did Evan Harris suffer from an intellectual
24 disability?

25 A. Yes, he did.

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1 Q. Did he suffer from an intellectual developmental disorder?

2 A. Yes.

3 Q. And tell the Court, if you would, what the criteria is for
4 a diagnosis of intellectual disability and an intellectual
5 developmental disorder.

6 A. Okay. Well, the first thing that they did is they did the
7 Wechsler Intelligence Scale IV, basically looking at his IQ.
8 And it displayed that he had what would be determined a
9 borderline intellectual functioning. So it would be below the
10 normal range of 80 to 120 for IQ. His results put him in about
11 the fifth percentile.

12 Also they looked at some subtests to get a better
13 understanding of comprehension. And that was done with a
14 very -- once again, very common assessment tool called the
15 Woodcock-Johnson. In reading, Evan was in the third
16 percentile. In reading comprehension, he was in the fourth
17 percentile. And in verbal comprehension, he was in the fourth
18 percentile.

19 Q. What's the significance of those findings?

20 A. Those are very low scores.

21 Q. And would a person with that level of reading skills,
22 comprehension skills be able to understand the arbitration
23 agreement that's at issue in this case?

24 A. In my opinion, no.

25 Q. And tell the Court, if you would, why it is you believe

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1 that Evan Harris lacked the ability to understand that
2 agreement.

3 A. Well, you know, in addition to having looked at his
4 intelligence, they also looked at adaptive skills. And his
5 adaptive skills, that's a much more practical social way of
6 looking at things. He was in less than the first percentile.
7 And that is really about our ability to perform daily tasks.

8 Now, it would be one thing if Evan only suffered from an
9 intellectual disability, but he did not. On top of that, he
10 had problems with severe impulsivity. He had difficulty with
11 planning and organization. He also had affective or mood
12 instability. And all of those are just added things that would
13 have an impact on thinking and comprehension. So there's the
14 intellectual disability, which is one thing. But that's not
15 the only thing that Evan had going on. He had much -- he had
16 other things going on in tandem.

17 Q. Is an intellectual disability also a mental illness
18 diagnosis?

19 A. According to the DSM-5, it is listed in the DSM-5. There
20 is still, amongst some people, some differentiation between the
21 two. But when we do our diagnoses, they are all listed
22 together.

23 Q. And based upon the history that Dr. Fenstermacher
24 referenced in his report, what diagnoses did he conclude Evan
25 suffered from after completing his battery of diagnostic

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1 testing?

2 A. He made three diagnoses. Bipolar disorder type I, mild
3 rapid cycling; number two, an intellectual disability; and,
4 number three, a generalized anxiety disorder.

5 One of the things, though, that I think is very important
6 to understand is when you look at testing, you have to look at
7 it in the context of someone's functioning. And this was
8 really done under the best of circumstances. Evan was at
9 Aspiro when this was done. He was regulated. He was sleeping.
10 He was busy. He wasn't using any drugs. He was taking his
11 medications. So what I would wager is this is kind of a
12 best-case scenario from the point of view that this was done at
13 a time when Evan was able to be cooperative. His mood was
14 relatively stable. He was taking his medications. And he was
15 able obviously to form a relationship with the psychologist to
16 be able to complete the testing.

17 Q. In your interaction with Evan, would you have been able to
18 have completed this testing on a given day with him?

19 A. No.

20 Q. And what was Evan like when you would be with him during
21 his, I guess, down times?

22 A. Evan was frequently agitated. He had trouble sitting
23 still. He constantly wanted to be with Dr. Harris and me.
24 Dr. Harris generally brought Evan to those appointments. Evan
25 alternated between wanting to be present in the room and not

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1 wanting to be present in the room. Asking the same questions
2 over and over again. Asking when we could leave.

3 Some days he was a bit more talkative or a bit more
4 cooperative. Specifically if I were asking Evan about things
5 that Evan was interested in, if I asked him about a Halloween
6 movie, we could have a discussion about that. If I asked about
7 his collection of masks, we could talk about that. If it were
8 a subject that I knew interested him -- and that's part of my
9 job, is to engage people -- I would always make every attempt.
10 But as far as being able to discuss anything beyond that, it
11 rarely had much substance.

12 Q. Now, there's been testimony about this behavioral
13 contract.

14 A. Yes.

15 Q. And tell the Court, if you would, first of all, you do
16 have a copy of that behavioral contract in your file, do you
17 not?

18 A. Yes, somewhere I do.

19 Q. Okay.

20 A. Yes, I've seen it.

21 Q. And you would agree with Dr. Harris's testimony, this was
22 actually prepared by somebody else to send him home back to New
23 Orleans, was it not?

24 A. Yes. It's not uncommon when children or adolescents leave
25 treatment facilities for behavioral contracts to be written.

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1 There are a couple of problems. I think that any time you're
2 writing a behavioral contract with someone who has intellectual
3 deficiencies, that's a huge problem. My experience has been
4 that a lot of those contracts are far too complicated and they
5 are far too long.

6 My experience has also been that a lot of times the young
7 people would agree to anything written on a contract just to
8 see the person who was showing it to them get out of their
9 face, leave them alone, so they could go on to the next task or
10 go home.

11 So I don't do behavioral contracts with individuals with
12 cognitive limitations. I don't think they are worth the paper
13 they are written on.

14 Q. Did the Harrises have any success with the behavior
15 contracts that they had entered into with Evan?

16 A. I don't think so.

17 Q. When was the last time that you interacted with Evan prior
18 to his leaving to go to Q&A in Davis, West Virginia?

19 A. I want to look it up just to be exact so I can have the
20 note here in front of me. That would have been on August the
21 18th, 2015.

22 Q. That would have been prior to the testing performed by
23 Dr. Fenstermacher?

24 A. Yes.

25 Q. And what was Evan's condition like on the day that you saw

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1 him?

2 A. Evan had, as you may recall, had run away from a previous
3 program or signed himself out, depending -- you know. And he
4 had been back in New Orleans about a week prior to my visiting
5 with him. He was back on his medication. He was recounting
6 some of the things that he had learned at Aspiro. He was happy
7 that he had been there. He was pleasant. He was pretty
8 talkative. He was in a pretty good frame of mind and willing
9 to go back to a program, willing to go to a program.

10 Q. What role, if any, did you have in suggesting to the
11 Harrises that they have their son interdicted, as it's been
12 described here today?

13 A. The interdiction process in the state of Louisiana is
14 called continuing tutorship. And it must be entered into
15 before an individual turns 18 years of age. The Harrises and I
16 had discussed that. And I think they had also chosen to seek
17 legal counsel to discuss it.

18 The difficulty was trying to ascertain to what degree or
19 not Evan would see progress. And also in understanding that
20 once that process has been done, at least in the state of
21 Louisiana, it's extremely difficult to undo. And at the time
22 Evan was reasonably cooperative with treatments and his parents
23 were on board and had very close supervision of him and were
24 doing, in my opinion, an extraordinary job of trying to get his
25 needs taken care of. So I didn't really feel the interdiction

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1 process was necessary.

2 I also thought that since he had borderline intellectual
3 functioning, I wasn't really sure that he would qualify,
4 necessarily, for continuing tutorship. He might or might not.

5 Q. Now, when Evan, as you said, ran away from the program,
6 what was your understanding about how he got back to New
7 Orleans?

8 A. My understanding was through the good graces of someone he
9 met either at the bus station or on the bus. They basically
10 helped him get back to New Orleans and were in contact with
11 Dr. and Mrs. Harris to let them know that they were on their
12 way back.

13 The Harrises had also contacted me because we weren't
14 really sure in what condition Evan would be when he arrived
15 back in New Orleans, so we were strategizing about whether he
16 would need psychiatric hospitalization or other interventions,
17 because it was uncertain at that point, or fairly clear that he
18 had not been taking his medication.

19 Q. And what medications had you prescribed for Evan during
20 this time period that he was at Aspiro, what medications was he
21 to be taking?

22 A. I wish I had the whole list right here. He was taking
23 lithium carbonate. He was taking Focalin. He was taking
24 Deplin. He was taking Trileptal. He had been on Amantadine,
25 we had done some weaning of that dose over time. I think I hit

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1 them all.

2 Q. Dr. Pelts, do you have an opinion to a reasonable degree
3 of medical probability as to whether or not Evan Harris was
4 capable of understanding terms like "economical" and
5 "expeditious"?

6 A. I do not feel that he could understand those terms.

7 Q. You heard what Sandy Schmeideknecht said about her
8 explaining this arbitration to Evan. Even if what she said is
9 true, would he have been able to understand what she was
10 talking about in the terms that she allegedly used?

11 A. Although I certainly was not there, and just based on her
12 testimony in court today that I heard, I do not believe, given
13 her explanation of how she broke it down so to give Evan a
14 better understanding, that Evan would have been able to
15 understand and totally take it in and make a decision.

16 Q. You knew Evan for ten years almost?

17 A. Almost.

18 Q. And during the nine-plus years that he knew Evan, would he
19 have ever consented to anyone searching his personal
20 belongings?

21 A. Evan, the one thing Evan took great pride in was his
22 stuff. He liked his stuff. The stuff he had in his room, the
23 stuff he collected, the stuff he owned. I think those
24 collections were a great source of pride and self esteem. And
25 the Harrises and I had many discussions about that, about how

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1 many horror films were too many or how many masks were too many
2 or how many of this. We tried to figure that out together.

3 But you know, one of the things that I will have to say
4 throughout that time was although he and I had multiple
5 discussions and he took great pride in these things, I don't
6 think he would have ever let anyone go through them or take
7 them, if he understood that were the case. His discussions of
8 these almost bordered on hoarding. It was such an obsessional
9 thing with him.

10 Q. How did Dr. Fenstermacher classify Evan's intellectual
11 disability?

12 A. Mild.

13 Q. And tell the Court, if you would, what you would expect
14 from a person who has been labeled as having a mild
15 intellectual disability.

16 A. Well, I would like to just speak a little bit from the
17 DSM-5. And it really kind of separates that discussion out
18 into three separate domains.

19 The first would be conceptual, and I'm going to kind of go
20 down. In adults, abstract thinking, executive functioning
21 issues. Problems planning, priority setting, strategizing,
22 cognitive flexibility issues. And issues with short-term
23 memory as well as difficulties with use of functional academic
24 skills, and that would be things like reading, money
25 management, those things are impaired. And that these

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1 individuals tend to be -- take a concrete approach to problems
2 and solutions.

3 The other aspect would be looking at it as described in
4 the DSM-5 in the social domain. And a lot of times they tend
5 to be immature, they miss social cues, difficulties regulating
6 emotion and behavior in an age appropriate way. Limited
7 understanding of risk in social situations, immature social
8 judgment. Gullibility.

9 And in a practical domain, competitive employment is often
10 seen in jobs that do not emphasize conceptual skills. They
11 generally need support to make healthcare decisions and legal
12 decisions, and to learn to perform skilled vocation
13 competently, and support is typically needed to raise a family.

14 So many of those things which are right out of the DSM-5,
15 I think very much describe Evan.

16 Q. In addition to his intellectual disability, would his
17 bipolar disorder affect his ability to understand and
18 comprehend the terms and conditions of the arbitration
19 agreement?

20 A. I believe so. Because a lot of times with bipolar
21 disorder and the swings that you can see in mood, having
22 difficulty with the thought processes in general.

23 Also Evan was taking some pretty high-powered psychotropic
24 medication, several of those can also affect cognition as well.

25 So you have both the mood disorder affecting judgment and

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1 thinking. But as much as I would like to say not, the
2 medications to treat them frequently being problematic as well.

3 Q. That's actually demonstrated in the Bachman Academy, where
4 he had trouble sleeping in class and paying attention in class?

5 A. It was very, very difficult regulating his medication.
6 And it was very hard to find a spot where he would be bright
7 enough and alert enough to be able to do more cognitive
8 thinking. And that frequently came at the expense of the
9 Harrises in violence in their home, versus the medications to
10 try to control some of the anger, aggression and impulsivity,
11 which sadly, I think, at times did negatively impact Evan's
12 cognition.

13 Q. Dr. Fenstermacher suggested in his report, did he not,
14 that the Harrises should consider having him declared
15 incompetent?

16 A. Yes.

17 MR. SIMS: Your Honor, that's all the questions I
18 have of this witness.

19 THE COURT: Cross-examination.

20 CROSS-EXAMINATION

21 BY MR. JONES:

22 Q. Dr. Pelts, you provided approximately 482 pages of records
23 in this case. They were obtained from your office. Are those
24 all of the records, along with some billing records, that
25 you're aware of relating to your treatment of Evan Harris?

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1 A. Yes.

2 Q. No other records in your possession, correct?

3 A. No. The only records I have are some notes that I took
4 that I brought with me in court today based on my review of the
5 chart and based on my review of testing and other things.

6 Q. Do you mind if I take a look at those notes?

7 A. No problem.

8 MR. JONES: Your Honor, may I approach?

9 THE COURT: You may.

10 A. And the DSM-5 that I brought with me today.

11 Q. Thank you.

12 A. Certainly.

13 Q. Dr. Pelts, you would agree that capacity generally means
14 that someone understands what they are reading, understands an
15 agreement, for instance, that they are reading; if someone has
16 capacity, they understand it, correct?

17 A. Well, I think if you're talking about capacity, I'm going
18 to take that to mean competence. And in looking at that, you
19 can look at that in very broad senses, and you can look at that
20 in very narrow senses. If you said that Evan Harris had the
21 capacity to brush his teeth, I would say yes, he did. If you
22 said, do I think he could understand that complex legal
23 document in the language even as explained by the lady earlier,
24 I do not.

25 Q. Okay. And in this particular situation, I want to focus

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1 in on capacity to understand legal documents.

2 A. Okay.

3 Q. You would agree that if someone does not have capacity to
4 understand legal documents, they can't sign any legal
5 documents, correct?

6 A. Well, whether they're allowed to do it or not is a
7 completely different thing. I think that people are allowed to
8 sign documents all the time where their competency is not
9 necessarily something that someone has assessed. I see things
10 all the time. I see people with schizophrenia being allowed to
11 sign into psychiatric hospitals. I don't think anyone with
12 active hallucinations is competent to sign into a psychiatric
13 hospital, but hospitals allow them to do that all the time.

14 Q. Okay. And if one of your patients that you believe to be
15 incompetent signed a document, a legal document, and you didn't
16 believe that they had the capacity to sign that document, you
17 would agree, in your opinion, that document wouldn't be valid
18 at that point, correct?

19 A. Correct. Unless there were extenuating circumstances to
20 why it was allowed to be signed.

21 Q. What sorts of extenuating circumstances?

22 A. We allowed Evan to sign a document so that he could apply
23 for social security disability. I dealt with social security
24 enough that a long letter from me explaining why Evan probably
25 was not competent to sign it to release the records from my

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1 office would have gone in the dead letter zone in social
2 security. We did allow Evan to sign that document, but I had
3 to make a decision. And the decision was I felt it was for his
4 greater good. And that if Evan did not sign that document,
5 which his mother was there to witness, we could not have ever
6 applied for him to get disability benefits. That would be an
7 exception, in my opinion.

8 Q. So your testimony today is that you would allow someone to
9 sign a legal document even if you believe they were
10 incompetent?

11 A. Once again, it would depend on the circumstances. If they
12 were signing away legal rights, no, I would not. If it were a
13 consent to get previous medical records so I could review them
14 to take better psychiatric care of them, yes, I would. Depends
15 on the circumstance.

16 Q. As far as Evan Harris goes, there's no record in your
17 entire file other than the Fenstermacher report which you have
18 indicated you believe says he was incompetent; there's no other
19 record mentioning Evan Harris lacking capacity, is there?

20 A. Perhaps not.

21 Q. Okay. And there's no other document mentioning the word
22 or the term interdiction, is that --

23 A. Interdiction.

24 Q. Interdiction -- in your entire file, correct?

25 A. Correct.

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1 Q. So prior to the affidavit, which you signed and gave to
2 Mr. Sims in this case, you had never signed a document
3 indicating that Evan Harris was incompetent; is that correct?

4 A. I had never been asked to, that's correct.

5 Q. And you had never come to that conclusion; is that
6 correct?

7 A. Well, one only need to spend some time with Evan, which I
8 was able to do on numerous occasions, to understand that he was
9 not able to have cognition concerning the medications he was
10 taking or other things. It's a very slippery slope.

11 And by the time he was old enough that that was really
12 being considered, he was really too old for interdiction unless
13 it became a very complicated legal procedure.

14 And Evan was showing progress in some domains. And I
15 wasn't sure that stripping him of those rights was necessary --
16 the timing was necessarily correct for that. If it were a
17 process in the future, that would be extremely difficult to
18 undo.

19 Q. So in other words, since you started treating Evan Harris,
20 you have never been of the opinion that he had capacity to sign
21 any legal document?

22 A. Correct.

23 Q. And you mentioned interdictment or interdiction?

24 A. Interdiction, yes.

25 Q. Did you ever discuss legal guardianship or a

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1 representative for Evan Harris with his parents?

2 A. I had discussed the subject with his parents, but my
3 personal opinion was that the Harrises were doing an excellent
4 job of providing for Evan's needs, so it really didn't come up
5 as an issue. And the facilities to which Evan went, he went
6 voluntarily.

7 Q. And yet you never took any record or notes in your entire
8 chart that you had, one, reached the conclusion that Evan
9 Harris did not have capacity; and, two, that his parents should
10 consider legal guardianship or interdiction, correct?

11 A. Correct.

12 Q. Is that typical in your practice to not document those
13 things in a patient's chart?

14 A. It just depends on the person's level of severity. It
15 depends on whether they are making progress or not. It
16 depends.

17 He was also seeing other mental health professionals in
18 tandem. And before Dr. Fenstermacher, I don't recall another
19 professional calling me or saying that was something that they
20 felt we should pursue.

21 Q. The affidavit you signed in this case, you didn't draft
22 it, did you?

23 A. No.

24 Q. Did Mr. Sims draft that affidavit for you?

25 A. He did.

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1 Q. And then did he send it to you for review?

2 A. Yes, he did.

3 Q. Did you make any changes to the affidavit whenever you got
4 it?

5 A. I did not.

6 Q. You signed it, I think you added maybe two numbers?

7 A. I think there was a little bit of information I had to
8 add, but it was some relatively minor things.

9 Q. Perhaps 2006, to indicate when you first started treating
10 him, and 25 years to indicate how long you had been in
11 practice; does that sound correct?

12 A. There was some factual information, yes, that sounds
13 correct.

14 Q. That's the first document that you ever signed indicating
15 that Evan Harris lacked mental capacity to sign legal
16 documents, correct?

17 A. Correct.

18 Q. Approximately ten months after his death, correct?

19 A. Correct.

20 Q. Did you know the Harrises before you began treating Evan?

21 A. No, I did not.

22 Q. In 2006, whenever you began treating him, that was your
23 first experience with Dr. Harris or Mrs. Harris?

24 A. That's correct.

25 Q. Moving on to Dr. Fenstermacher's report, you weren't

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1 present for any of the testing that Dr. Fenstermacher
2 performed, correct?

3 A. Correct.

4 Q. You've never spoken to Dr. Fenstermacher about his testing
5 of Evan Harris, correct?

6 A. I have not.

7 Q. Your understanding of the testing and his conclusions is
8 limited solely to his report, correct?

9 A. Yes.

10 Q. In your affidavit, you actually indicated that it was a
11 requirement of Q&A for Evan Harris to go through this testing.
12 Are you indicating that you don't know whether that's true or
13 not today?

14 A. Well, what I knew was that he was being considered for
15 alternative placements. I knew that they were looking at some
16 different facilities. I did not know whether the requirement
17 or the requesting for testing was specifically made by Q&A
18 specifically, or whether that was done in a blanket way.

19 I'll give you an example. Sometimes a consultant who's
20 going to do a placement will call me. And they will say before
21 we proceed with looking at facilities, we need some new testing
22 or we need the testing updated. And I'm never sure when that's
23 being requested, whether it's to one facility, ones that they
24 all wanted, they believe that up-to-date information will help
25 a facility determine whether they are the right placement for

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1 that individual or not. So the circumstances under which it
2 was -- I knew it had been requested, but I didn't know
3 specifically whether it was Q&A or not.

4 Q. So in paragraph number 15 in your affidavit, when you --
5 what you signed stating, I'm aware that Dr. Fenstermacher
6 completed his evaluation and report for Evan M. Harris as a
7 requirement for his admission into the program as Q&A
8 Associates, Inc., you don't know whether that's true or not?

9 A. All I know is that the program, it was requested that
10 testing be done. I didn't know it was Q&A, so that part I can
11 tell you, yes, I wasn't sure.

12 Q. So it's incorrect, you're not aware of that, correct?

13 A. Correct.

14 Q. Okay. In fact, doesn't his report actually say who
15 requested the testing?

16 A. Yes.

17 Q. Okay. It actually says Evan, his parents and his
18 treatment team, correct?

19 A. Yes.

20 Q. You don't know who his treatment team is, correct, that
21 requested this?

22 A. No. I think, you know, as far as the treatment team, no,
23 I did not.

24 Q. Dr. Fenstermacher's report actually says that it's for a
25 specific point in time, correct?

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1 A. Yes.

2 Q. And that specific point in time would be the day of
3 testing, correct?

4 A. Correct.

5 Q. October 13th, 2015, correct?

6 A. Correct.

7 Q. It wouldn't be for November 20th, 2015, would it?

8 A. Not necessarily.

9 Q. And Dr. Fenstermacher's not here to say whether it would
10 or not, correct?

11 A. Correct.

12 Q. And you weren't there for the testing?

13 A. I was not.

14 Q. Haven't talked to him about it, correct?

15 A. I have not.

16 MR. JONES: May I approach, Your Honor?

17 THE COURT: You may.

18 Q. Dr. Pelts, I have handed you what's been marked
19 Plaintiff's Exhibit 6. I would like you to turn to page 24.
20 At the bottom, it's Pelts 000271. Do you recognize this
21 document?

22 A. Yes. The psychological report, yes.

23 Q. That's in your chart, correct?

24 A. That's correct.

25 Q. Okay. Yeah. Page 24 at the top, or if you look at the

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1 bottom, it's Pelts 000271.

2 MR. SIMS: Those may not be Bates stamped like yours.

3 A. I'm not following.

4 Q. It's the last page, I believe.

5 A. Okay, I'm on the last page.

6 Q. Okay. Perfect. Okay.

7 Previously you testified that Dr. Fenstermacher actually
8 made a determination that Evan Harris was incompetent, correct?

9 A. Based on what he was saying in this report, I felt it was
10 congruent with his being incompetent, yes.

11 Q. Well, are you saying he made the determination that he was
12 incompetent?

13 A. To make decisions as it resulted to the specifics that I
14 had been asked about the document.

15 Q. So are you saying that he didn't make a determination of
16 incompetency and that you made that determination?

17 A. No. No. No. I think if you let me review it, I think he
18 did make some mention of that. I would have to review.

19 Yes, it says in number 17, that the evaluation could be
20 helpful -- can be helpful if they want to consider
21 guardianship, power of attorney and/or conservatorship. It's
22 likely that he will need extra years before he's competent to
23 independently manage his own affairs.

24 Q. Okay. It says this can be helpful if they want to proceed
25 with a guardianship, power of attorney and/or conservatorship?

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1 A. In the future.

2 Q. That decision had already been made in the past that it
3 wasn't the right move at this point?

4 A. Well, it's my understanding, and I'm not an expert on
5 this, I think one still can pursue that when someone is over
6 18, it's just a much more arduous process when someone is
7 already an adult.

8 Q. But you would agree he didn't state definitively that Evan
9 Harris needs to have a guardian, conservator or a power of
10 attorney?

11 A. Correct.

12 Q. Right? It says this could be helpful if you choose to
13 pursue that, correct?

14 A. Correct.

15 Q. And this document also doesn't say that he lacks capacity
16 to sign a contract, does it?

17 A. It doesn't speak to capacity or noncapacity.

18 Q. Right. It doesn't say that he's incompetent to sign a
19 contract, does it?

20 A. It does not.

21 Q. It says he might be -- he might not be competent to manage
22 his -- independently manage his own affairs?

23 A. It doesn't. But I've never read a psychological
24 evaluation that spoke to that issue specifically before.

25 Q. So it says, "it is likely that he will need extra years

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1 before he will be competent to independently manage his own
2 affairs." What is Dr. Fenstermacher talking about, his own
3 affairs?

4 A. I'm assuming he's talking about living, money, day-to-day
5 things.

6 Q. Let's not assume. What does he mean by "affairs"?

7 A. Well, we would have to ask him.

8 Q. You don't know?

9 A. I don't know. I'm presuming, though, he's talking about
10 day-to-day living skills as I read it.

11 Q. So this document, which you relied upon to say that Evan
12 Harris is incompetent, doesn't say that he's incompetent, nor
13 does it say that he needs a conservatorship, guardianship or
14 power of attorney?

15 A. No. What I'm saying is, I think based on this document,
16 it is my personal opinion, coupled with the mental illness from
17 which he suffers, coupled with my having had numerous visits
18 and treating him over numerous years, I do not believe he had
19 the intellectual capacity and understanding of the contract
20 that was placed in front of him specifically when it came to
21 signing away rights.

22 Q. That's the same opinion you had for nine years, correct?

23 A. I haven't been asked that opinion before.

24 Q. So in 2011, do you think Evan Harris had capacity to sign
25 a release?

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1 A. No, I do not.

2 Q. Okay. In 2014, do you think he had capacity to sign a
3 release?

4 A. Not as far as to understand something like this legal
5 document as it was explained in court today.

6 Q. Okay.

7 A. I don't think it could have been explained in a way that
8 Evan could have really grasped what he was signing.

9 Q. That's why you set up a guardianship or power of attorney
10 or a conservatorship, because someone doesn't understand what
11 they're signing, correct?

12 A. Correct.

13 Q. As a doctor, that's your duty to ensure and protect your
14 patients, correct?

15 A. If I have concerns that the care that they are not
16 currently receiving is meeting their needs.

17 Q. And you thought all of the care that Evan Harris was
18 receiving was meeting his needs over the course of treatment,
19 correct?

20 A. Up until his untimely death, yes, I do.

21 Q. Relating to this arbitration agreement, you weren't
22 present whenever it was signed, were you?

23 A. No, I was not.

24 Q. You don't know if it was signed in the morning, in the
25 evening, in the afternoon, correct?

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1 A. It wasn't dated and timed. And it was not documented when
2 it was signed, so it's hard for me to know. I was a bit
3 surprised that that was the case, to be honest with you, that
4 it was not documented when it was signed -- you know, when it
5 was signed or what was going on with that. That's kind of
6 standard procedures.

7 Q. As far as your opinions, you reached a conclusion that he
8 didn't have capacity to sign this document regardless of how it
9 was explained to him?

10 A. Well, number one, no, I don't think he would. But number
11 two, I got to hear the lady explain what she said to him. And
12 I can assure you, I don't think, given what she said in court
13 today, that he would understand that.

14 Q. Right. And your --

15 A. That anyone should perform. If she said in court today
16 what she actually did, truly, in person, with Evan.

17 Q. Okay. Your opinion hasn't changed then, it was the same
18 back in November whenever you signed your affidavit as it is
19 today?

20 A. Correct.

21 Q. So it wouldn't have mattered how she explained it;
22 according to you, he wouldn't have understood the document,
23 correct?

24 A. Correct. If anything, her testimony today only further
25 made me believe and question whether he was understanding what

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1 he was signing. It only reinforced that.

2 Q. And you wouldn't want him to sign something he doesn't
3 understand, correct?

4 A. Correct.

5 Q. You mentioned some terms that Evan wouldn't understand, in
6 your opinion, such as the word "arbitration."

7 Did you ever discuss the word "arbitration" with Evan?

8 A. No.

9 Q. So for all you know, Evan could have learned about
10 arbitration in high school?

11 A. I don't know. But I would seriously doubt it given his
12 curriculum in school.

13 Q. But you don't know definitively, correct?

14 A. I don't.

15 Q. The same with "economic," you wouldn't know whether he
16 learned that in high school or not, correct?

17 A. Correct.

18 Q. You wouldn't know whether he learned that in signing
19 another arbitration agreement at another facility, correct?

20 A. I would not.

21 Q. Same thing goes for --

22 A. I can only speak to the simplicity of Evan's vocabulary
23 and his interactions with me and his very limited range of
24 understanding anything but the simplest of words and simplest
25 of terms.

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1 Q. You keep use the word simple. What's a simple word?

2 A. Smoking is a simple word.

3 Q. Is there a list of simple words?

4 A. TV. No, I'm talking about -- I'm a child psychiatrist. I
5 have to use language that people understand. And a lot of
6 times my part is trying to figure out how can we explain things
7 in a way that someone can understand using simplistic language,
8 or no matter how simplistic the language that we use would they
9 not understand.

10 And I don't think arbitration, no matter who were
11 explaining it, would have been something that Evan would have
12 understood.

13 Q. So there's no list of simple words that you can use with
14 someone like Evan Harris, correct?

15 A. It depends on what you're trying to explain. Like I said,
16 I think when you're getting into complex terms, it's a whole
17 different ballgame.

18 I also will tell you I don't think if Evan Harris, given
19 the number of times he said he wanted to sue somebody, had
20 understood that he was totally completely giving up his right
21 to do that, that he would have said hand it over, here, let's
22 sign it and be done. He was threatening to sue all the time.

23 MR. JONES: Approach, Your Honor?

24 THE COURT: You may.

25 MR. JONES: Have this marked as the next defense

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1 exhibit.

2 Do you mind helping me with the Elmo?

3 Q. Dr. Pelts, I've handed you what's been marked, I believe,
4 Defendants' Exhibit C. My apologies. This is an
5 authorization. I believe this is one of the authorizations you
6 had actually mentioned earlier, correct?

7 A. Correct.

8 Q. And it's signed by Evan Harris?

9 A. Correct.

10 Q. Do you know whether Evan Harris could understand all of
11 the terms in this authorization?

12 A. I wasn't there, because this was signed at the social
13 security office. So I wouldn't know. But my first guess
14 looking at it is I would say maybe yes, probably not.

15 Q. Maybe yes, probably not?

16 A. I wasn't there when it was explained to him. But what I
17 understand about this form -- and I might mention, his mother
18 was the witness. So someone was there who is responsible for
19 his well being. And I take that to be a great important thing
20 to be mentioning here, is Evan was signing a form to let me
21 send social security his records.

22 His mother was there, she signed off on it. I think
23 that's a pretty innocuous thing. And I know social security
24 would not have allowed that to proceed without Evan's
25 signature.

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1 Q. So -- okay. Do you know whether it's a HIPAA violation to
2 release records with a release that's signed by an
3 incapacitated person?

4 THE COURT: Let's keep on point. You're getting too
5 far astray here.

6 MR. JONES: Okay. Yes, Your Honor.

7 Q. So you were not present with this -- this document,
8 correct?

9 A. I was not.

10 Q. But it means something to you that his mother,
11 Mrs. Harris, was actually present whenever this was signed,
12 correct?

13 A. Yes.

14 Q. Would it be important to you if she was present or had
15 reviewed other documents that Evan Harris had signed?

16 A. You have to understand. If someone signs a release of
17 records at the social security office, for example, I'm not
18 releasing the records just because I received this in the mail.
19 I have that individual come into my office and sign a release
20 on my end, which is in the chart, and was witnessed by his
21 mother to release the records as well.

22 Q. So it would be important that his mother signed this
23 document -- or was present whenever he signed this document,
24 correct?

25 A. Correct.

PAUL GERARD PELTS - CROSS

1 Q. And had reviewed this document; that would be important to
2 you, correct?

3 A. Correct.

4 Q. Because she wouldn't let him sign something that she
5 didn't think was okay, correct?

6 MR. SIMS: Objection.

7 A. I can't speculate.

8 THE COURT: Sustained.

9 MR. JONES: Approach, Your Honor? Have this marked
10 as the next defense exhibit.

11 Q. Dr. Pelts, this is another release signed by Evan Harris,
12 correct?

13 A. Correct.

14 Q. And this one is signed in 2014, correct?

15 A. Correct.

16 Q. And you, again, would have provided records based upon
17 Evan Harris's signature on this document, correct?

18 A. Correct.

19 Q. And you agree it's a legal document, correct?

20 A. Correct.

21 MR. JONES: No further questions at this time, Your
22 Honor.

23 THE COURT: Redirect?

24 MR. SIMS: No, Your Honor.

25 THE COURT: May the witness be excused?

PAUL GERARD PELTS - CROSS

1 MR. SIMS: Yes.

2 THE COURT: Thank you. Plaintiff may call his next
3 witness.

4 MR. SIMS: Your Honor, may I have a two-minute
5 recess?

6 THE COURT: You may.

7 (Recess taken 3:22 p.m. to 3:27 p.m.)

8 THE COURT: Mr. Sims.

9 MR. SIMS: Your Honor, I would move for the admission
10 of Plaintiff's Exhibit 6 and I don't have any other witnesses,
11 Your Honor.

12 THE COURT: Any objection to 6?

13 MS. SAAD: No, Your Honor.

14 MR. JONES: And, Your Honor, we would move for the
15 admission of Defendants' Exhibits C and D.

16 THE COURT: All right. Plaintiff's 6, Defendants' C
17 and D will be admitted into evidence.

18 MR. SIMS: No objection, Your Honor.

19 (Plaintiff's Exhibit 6 and Defendants' Exhibits C and
20 D were admitted.)

21 THE COURT: I assume there's no objection to them
22 calling no further witnesses.

23 Welcome back, Mrs. Harris. And defense may call its
24 first witness.

25 MS. SAAD: Your Honor, on that point, we may call

AUDREY PEAVEY - DIRECT

1 Kathy Harris still in the future and would like for her to
2 continue being sequestered. We have one witness we are going
3 to call and we would like her to be sequestered through that
4 witness, and then we will make the determination of whether to
5 her call her.

6 THE COURT: Who is your witness?

7 MS. SAAD: Your Honor, next we will call Audrey
8 Peavey.

9 THE COURT: All right.

10 THE CLERK: If you'll come over here first and state
11 and spell your name for the court reporter.

12 THE WITNESS: Audrey Peavey. A-u-d-r-e-y,
13 P-e-a-v-e-y.

14 **AUDREY PEAVEY, DEFENSE WITNESS, SWORN**

15 **DIRECT EXAMINATION**

16 BY MS. SAAD:

17 Q. Good afternoon. Would you please state your full name for
18 the record, please.

19 A. Audrey Ann Peavey.

20 Q. Where do you work?

21 A. Q&A Associates.

22 Q. What is your role and position there?

23 A. I'm the admissions and marketing director, as well as
24 parent coach.

25 Q. And in November of 2015, what was your role at Q&A?

AUDREY PEAVEY - DIRECT

1 A. I was the admissions and marketing director.

2 Q. And prior to -- well, how long have you been with Q&A?

3 A. Since fall of 2012.

4 Q. Have you been in the role of admissions that entire --
5 your entire work period at Q&A?

6 A. Yes.

7 Q. And prior to coming to work at Q&A, have you worked in
8 admissions for other similar programs?

9 A. Yes.

10 Q. And give us roughly how many years have you worked in
11 admissions for this type of industry?

12 A. About 16, 17 years.

13 Q. Okay. And in your role of admissions at Q&A, do you have
14 interactions with the parents of clients?

15 A. Yes.

16 Q. And what type of interactions do you have?

17 A. Phone conversations, emails, sometimes face-to-face
18 meetings if they come to tour.

19 Q. Is it your role that you try to help acquire the
20 information that Q&A needs to evaluate a client, also provide
21 information to the client and the client's family?

22 A. Yes.

23 Q. Do you recall being involved in the admission process for
24 Evan Harris?

25 A. Yes.

AUDREY PEAVEY - DIRECT

1 Q. And do you recall specifically who you were in contact
2 with regarding his admission?

3 A. Both Rick and Kathy Harris.

4 Q. And does Q&A require some forms to be completed prior to a
5 client's admission to Q&A?

6 A. Yes.

7 Q. And has Q&A ever rejected someone, ever evaluated a client
8 and said this person is not the right fit for Q&A?

9 A. Yes.

10 Q. And what are some of the forms that Q&A requires?

11 A. We have a 13-, 14-page application. If there's been any
12 prior psychoeducational testing, transcripts. You know,
13 educational background, medical background, that type of thing.

14 Q. Okay. And you mentioned you exchanged some emails for the
15 admission process of Evan Harris. Did you exchange some emails
16 with Kathy Harris?

17 A. Yes, I did.

18 Q. Is that mostly how you communicated with Mrs. Harris?

19 A. Yes.

20 MS. SAAD: Your Honor, I would like to mark this as
21 Defendants' Exhibit E.

22 May I approach, Your Honor?

23 THE COURT: You may.

24 Q. I'm going to hand you what's been marked as Defendants'
25 Exhibit E. Ms. Peavey, are you familiar with the document I

AUDREY PEAVEY - DIRECT

1 just handed you?

2 A. Yes.

3 Q. Have you seen it before?

4 A. Yes.

5 Q. And what is this document that I just handed you?

6 A. Some email exchange between myself and Kathy Harris.

7 Q. And I want to focus first on the earliest email that you
8 exchanged with Kathy Harris on October 30th.

9 Can you please read that for the Court, please?

10 A. "Audrey, I filled out my portions and attached them.
11 Caitlin will assist Evan in completing pages 4, 5, 6, 12 and
12 13, but does not expect to send them before this coming
13 Tuesday. Sorry, Evan is out in the wilderness somewhere. I
14 will forward his most recent psychological testing results as
15 soon as I get them. Keep us posted on his likelihood of being
16 accepted into your program, and please let me know how soon I
17 should order the cold weather clothing" and "the packing
18 list" -- "on the packing list. He does have some ski clothing
19 but he lost weight, will need a new wardrobe prior to transfer.
20 Thanks, Kathy Harris."

21 Q. At one in point in there, the psychological or
22 psychoeducational testing as I've heard it called, is that
23 required by Q&A?

24 A. No, it is not.

25 Q. But if it's been conducted for a client, is it then just

AUDREY PEAVEY - DIRECT

1 requested that a copy be provided?

2 A. Yes.

3 Q. And this email, who is it signed by?

4 A. Kathy Harris.

5 Q. And it's addressed to you; is that correct?

6 A. Yes.

7 Q. I want to focus on the first two lines. Mrs. Harris says
8 that she filled out my portions and attached them. What is she
9 speaking of?

10 A. The application.

11 Q. Okay. And then she specifically says that Evan -- or
12 Caitlin will assist Evan in completing pages 4, 5, 6, 12 and
13 13. Do you know who Caitlin is?

14 A. Yes.

15 Q. Who is Caitlin?

16 A. She was the therapist working with Evan at the program
17 that he was at prior to enrolling with us.

18 Q. So that was someone that could have possibly given the
19 other portions for Evan's completion to Evan at that program?

20 A. Correct.

21 Q. I want to move to the next email in the chain, which is
22 dated November 11th.

23 Do you see that email?

24 A. Yes.

25 Q. And who is the email from?

AUDREY PEAVEY - DIRECT

1 A. That's from myself to Kathy.

2 Q. Okay. And without reading the whole thing, what are you
3 generally requesting in this email?

4 A. More supportive documents. And the original application
5 she sent came through unlegible or unreadable, so I asked her
6 to resend it.

7 Q. And is the next email in this chain of November 12th, is
8 that a response from Kathy Harris?

9 A. Yes.

10 Q. And what does she say?

11 A. "I'm scanning everything again right now. Please let me
12 know if you don't get it."

13 Q. Did she then attach the application and those documents to
14 that email?

15 A. Yes.

16 Q. And are those documents hereto attached to the exhibit
17 you're holding in your hand, Exhibit D?

18 A. Yes.

19 Q. And I want to just briefly walk through what has been
20 discussed a bit today. The documents that are attached, what
21 is it as a whole?

22 A. The application with some supportive documents, his
23 insurance, passport, things like that.

24 Q. Okay. And when you received the document from Kathy
25 Harris, was it complete, partially complete or uncomplete at

AUDREY PEAVEY - DIRECT

1 all?

2 A. It was very thoroughly complete, other than the portions
3 that Evan needed to fill out.

4 Q. I just want to focus on a couple of things. So if we look
5 at -- there are several pages, and to save time for the Court
6 I'm not going to have all this made part of the record, but the
7 handwriting that we've seen, this is what you received from
8 Kathy Harris; is that correct?

9 A. Yes.

10 Q. And then there's a blank page on page 4, and it says
11 Caitlin will forward pages 4, 5, 6, 12 and 13.

12 Do you see that there?

13 A. Yes.

14 Q. And then flipping through, there are some other blank
15 pages. And are those for the client to complete, the ones that
16 were blank in the packet?

17 A. Yes.

18 Q. If we skip to page 12, what is page 12?

19 A. Contract, medical authorization, release and consent
20 agreements.

21 Q. And when you received this document, what was completed on
22 this form?

23 A. The name of participant, date of birth and social security
24 number.

25 Q. Just as we see here in front of us on page 12, right, it's

AUDREY PEAVEY - DIRECT

1 just that top three lines were completed?

2 A. Correct.

3 Q. If we flip back to the October 30th email from Kathy
4 Harris, does she state specifically anything about page 12?

5 A. Just that she's left them blank for Evan to complete.

6 Q. Okay. And is that also the case for page 13?

7 A. Yes.

8 Q. If we turn to page 13, what is page 13?

9 A. Release of information, as well as insurance information.

10 Q. And you received this document completed as we have shown
11 here, except for the signature of the participant; is that
12 correct?

13 A. Correct.

14 Q. At any point in your communications with Mr. or -- I'm
15 sorry -- Dr. or Mrs. Harris, did either of them tell you that
16 Evan either lacked capacity to enter a legal document or that
17 he had some sort of conservatorship or legal guardian?

18 A. No, they did not.

19 Q. In fact, the email that you received actually indicates
20 that Mrs. Harris filled out the portions of the application
21 that were for the parent and left the blanks that were for the
22 client, for Evan to sign; is that correct?

23 A. Yes.

24 Q. Do you know what Mrs. Harris's line of work or background
25 was?

AUDREY PEAVEY - CROSS

1 A. I believe she's a nurse.

2 Q. Did she do anything else, do you know?

3 A. Not that I'm aware of.

4 Q. Nowhere on this form or nowhere in those emails was there
5 any indication or note from Dr. or Mrs. Harris that Evan Harris
6 should not sign any legal document; is that correct?

7 A. Yes, that's correct.

8 MS. SAAD: No further questions. And, Your Honor, I
9 would move for the admission of Defendants' Exhibit D.

10 THE COURT: D?

11 MS. SAAD: E, I'm sorry.

12 THE COURT: E, okay. Any objection?

13 MR. SIMS: No, sir.

14 THE COURT: All right. Defendants' Exhibit E will be
15 admitted into evidence. Cross-examination.

16 (Defendants' Exhibit E was admitted.)

17 MR. SIMS: Thank you, Judge.

18 CROSS-EXAMINATION

19 BY MR. SIMS:

20 Q. Is it Mrs. Peavey?

21 A. Ms. is fine.

22 Q. Okay. Ms. Peavey, I'm David Sims.

23 A. Hello, Mr. Sims.

24 Q. And you understand that I filed a lawsuit on behalf of the
25 Harrises against Q&A?

AUDREY PEAVEY - CROSS

1 A. Yes.

2 Q. And you understand that part of that lawsuit concerns this
3 arbitration agreement that's a part of the admission packet?

4 A. Yes.

5 Q. You understand, ma'am, that pages 12 and 13 clearly say
6 signature of participant?

7 A. Yes.

8 Q. Do you know what that means?

9 A. Signature of participant, yes.

10 Q. Okay. So that means the parent is not to sign it, does it
11 not?

12 A. Yes, unless they have guardianship.

13 Q. And you testified that no one ever said anything about
14 Evan having a guardianship, correct?

15 A. Yes, not that we were aware of.

16 Q. Now, you said, and I think I wrote this down correctly,
17 that they have to fill out a 14- or 15-page application, psycho
18 testing if it's available, transcripts; did I get that right?

19 A. Yes.

20 Q. So you were expecting to receive a psychological
21 examination for Evan Harris, were you not?

22 A. Through the discussion with his parents, yes.

23 Q. Well, did you not tell them that one was required?

24 A. I never use the word require, I would not use that word.

25 Q. Okay. So you admit people that you don't have a

AUDREY PEAVEY - CROSS

1 psychological test for?

2 A. Yes.

3 Q. What did you do when you got the psychological evaluation
4 done by Dr. Fenstermacher?

5 A. We did not have the test done by anybody.

6 Q. No, I'm asking --

7 A. We received a copy.

8 Q. What did you do with it?

9 A. I sent it to the rest of the treatment team to review.

10 Q. How did you do that?

11 A. By email.

12 Q. And how did you get it?

13 A. I believe by email, but I don't recall for sure.

14 Q. Did you read it?

15 A. I scanned it. It's not my job to review that information.

16 Q. It is your job to make sure this packet is filled out, is
17 it not?

18 A. Yes.

19 Q. Including pages 12 and 13, correct?

20 A. Except for the participant's signature. That's usually
21 left to our life coaches when the client arrives if they have
22 not signed it prior to arrival.

23 Q. So who was the life coach that was going to assist Evan in
24 signing pages 12 and 13?

25 A. It would have been Sandy Schmeideknecht.

AUDREY PEAVEY - CROSS

1 Q. Why her? You have other life coaches, don't you?

2 A. Because she's our head life coach and she does all the
3 initial enrollments and assessments.

4 Q. This is not an enrollment or assessment. This is a
5 contract, is it not?

6 A. Right, which is part of the enrollment process.

7 Q. So the person in charge of admissions is only in charge of
8 of part of the admission packet, somebody else is in charge of
9 the other parts, do -- am I understanding you correctly?

10 A. We are in charge of receiving -- I am in charge of
11 receiving the information and passing it on to the rest of the
12 treatment team to review.

13 Q. Well, did you notice that pages 12 and 13 were unsigned?

14 A. Yes.

15 Q. When did you notice that?

16 A. When the application was received. Because it was noted
17 by the mother that they would not be signed.

18 Q. Where is that email?

19 A. They would be coming later. Pardon me?

20 Q. Where is that email?

21 A. Which email?

22 Q. The one where Mom said she was not -- that he was not
23 going to sign those documents.

24 A. It's right here.

25 Q. Is that the one you were just reading from?

AUDREY PEAVEY - CROSS

1 A. Yes.

2 Q. The one that says Evan will -- or Caitlin will send you
3 pages 4, 5, 6, 12 and 13?

4 A. Yes.

5 Q. Okay. Did you get those from Caitlin?

6 A. No, I don't think they came until he arrived with us.

7 Q. All right. So you didn't even have them from Caitlin or
8 anybody else at the time that Evan arrived at the facility,
9 true?

10 A. True.

11 Q. And do we have pages 4, 5, 6 completed by anyone of this
12 application packet?

13 A. Not in this, no.

14 Q. Is there another packet that I don't have that these are
15 filled out?

16 A. Those were completed later, yes.

17 Q. When were they completed and by whom?

18 A. I have no -- I don't have the exact information on that.

19 Q. So he was admitted without 4, 5 and 6 completed, correct?

20 A. Yes. Or they came with him, I'm not sure of that. I
21 don't recall.

22 Q. And how is it that pages 12 and 13 got into the hands of
23 Mrs. Schmeideknecht?

24 A. That would have been sent probably by email.

25 Q. Where is that email?

AUDREY PEAVEY - CROSS

1 A. It was forwarded by me to the treatment team when the
2 application came in.

3 Q. Do you have those emails?

4 A. I don't have it with me, it's not here, no.

5 Q. Okay. So as we sit here today, you don't have any proof
6 that you sent it to Sandy, do you?

7 A. I don't, no, not with me.

8 Q. All right. Now, so what did your email say to Sandy about
9 getting this document signed?

10 A. I don't have it in front of me so I don't know what
11 exactly it said. It was over a year ago.

12 Q. Well, you knew we were going to be here today talking
13 about these two pages, 12 and 13, did you not?

14 A. I assumed so, yes, or understood that that would be the
15 case.

16 Q. You understood that completely, did you not?

17 A. Yes.

18 Q. Not a surprise.

19 MS. SAAD: Objection. If you're getting into the
20 realm of attorney-client privileged information and
21 conversations with counsel, then I would object.

22 THE COURT: Sustained.

23 MR. SIMS: I'm not asking for that. But thank you.

24 BY MR. SIMS:

25 Q. Ma'am, did you look for emails where you actually sent

AUDREY PEAHEY - CROSS

1 this to Ms. Schmeideknecht prior to your testimony today?

2 A. I'm not sure. I sent all the emails that concerned Evan
3 to my boss. And to -- I assume it was forwarded to our
4 attorneys.

5 Q. Who is your boss?

6 A. Angie Shockley.

7 Q. Is your office at Q&A or is it somewhere else?

8 A. I have an office in -- you know, we have an office in one
9 of the buildings that we use. And I also work from home at
10 times.

11 Q. You work from home all the time, do you not?

12 A. Not all the time, no.

13 Q. Do you come to the office and have students or applicants
14 complete forms like this, pages 12 and 13?

15 A. They wouldn't do that with me, no. No. They would not do
16 that with me. They would do that in the life skills office
17 with their life coaches.

18 Q. Did you meet Evan?

19 A. Yes.

20 Q. Did you ask anyone, specifically Mrs. Schmeideknecht, did
21 you ask her if she got Evan's signature on 12 and 13?

22 A. It's part of our process, it's always done that way. I
23 did not ask her specifically if she got those signatures, no.

24 Q. Well, when those signatures were obtained, why was that
25 not supplemented or put in this packet that you had with the

AUDREY PEAVEY - CROSS

1 signature on it?

2 A. Because these are electronic files and they are passed on
3 electronically.

4 Q. Okay. When you printed it, you left 12 and 13 in their
5 original form, did you not?

6 A. Yeah, that was the email that I received and how I
7 received it.

8 Q. Ma'am, who was going to pay for Evan's care and treatment
9 while he was at Q&A?

10 A. His parents, as far as I knew.

11 Q. You knew that, did you not?

12 A. Yes. That is where the funds came from, but I have no
13 idea where they got their funds.

14 Q. I understand. But you knew Kathy and Dr. Harris were
15 going to be paying the bill, correct?

16 A. Yes.

17 Q. And the bill was like \$9,500 a month?

18 A. Correct.

19 Q. You didn't trust Evan to sign that document saying he was
20 going to agree to pay \$9,500 a month, did you?

21 A. There was no document about the payment.

22 Q. I'm sorry. The Harrises didn't sign an agreement that
23 they would pay you \$9,500 a month and give you a credit card
24 authorization so you could charge --

25 A. That gets sent by our accounts office, that's not part of

AUDREY PEAVEY - REDIRECT

1 the admissions process. That's our accountant takes care of
2 that as soon as the enrollment has been approved.

3 Q. My question, though, was, you weren't counting on Evan to
4 pay, you were counting on Dr. and Mrs. Harris to pay?

5 A. No, we were not counting on Evan to pay.

6 Q. And so when it came time to be financially responsible,
7 you expected Dr. and Kathy Harris to do that, correct?

8 A. Yes.

9 Q. Not Evan?

10 A. Correct.

11 MR. SIMS: Your Honor, that's all the questions I
12 have?

13 THE COURT: Redirect?

14 MS. SAAD: I just have a couple of questions and it's
15 just to clarify what is -- the testimony that's just come in.

16 REDIRECT EXAMINATION

17 BY MS. SAAD:

18 Q. The email and the attachments that we just discussed with
19 the blank pages for Evan Harris, that is how you received those
20 documents from Mrs. Harris in the attachment to the email; is
21 that correct?

22 A. Yes.

23 Q. There is -- is it your understanding that those blank
24 pages to be completed by Evan Harris were then later completed
25 by Evan Harris and were placed in the electronic file?

AUDREY PEAVEY - RECROSS

1 A. Yes.

2 Q. In fact, I think they are an exhibit.

3 THE COURT: They are.

4 Q. Plaintiff's Exhibit Number 4. I don't know if we can pull
5 this up briefly, the Elmo.

6 This is the same life skills assessment and -- let me see
7 the other pages -- well, to save time, it's your understanding
8 that Sandy Schmeideknecht went through those blank pages and
9 assisted Evan Harris in completing those portions of the
10 application; is that correct?

11 A. Yes.

12 Q. As for the payment by Dr. and Mrs. Harris, they agreed to
13 pay those fees; is that correct? It's not that you didn't
14 trust Evan Harris or that you even requested from Evan Harris,
15 but that Dr. and Mrs. Harris agreed to pay?

16 A. Yes.

17 MS. SAAD: I have nothing further.

18 MR. SIMS: Just briefly, Your Honor.

19 RECROSS-EXAMINATION

20 BY MR. SIMS:

21 Q. Page 4 that you're looking at up there?

22 A. Yes.

23 Q. It has on it, "to be completed by the client," does it
24 not?

25 A. Yes.

AUDREY PEAVEY - FURTHER REDIRECT

1 Q. Did you just see that on the board?

2 A. See what on the board?

3 Q. The words, "to be completed by the client"?

4 A. What she put on the board was the life skills assessment,
5 it was not the application.

6 Q. Wasn't this document at all, was it?

7 A. No.

8 Q. And it wasn't page 5, correct?

9 A. Not that I saw up there, no.

10 Q. And it wasn't page 6, true?

11 A. I did not see that.

12 MR. SIMS: That's all the questions I have, Your
13 Honor. Thank you.

14 THE COURT: Re-redirect.

15 MS. SAAD: Yes, please.

16 FURTHER REDIRECT EXAMINATION

17 BY MS. SAAD:

18 Q. Just so we can be clear. Does this page say "to be
19 completed by the client" at the top of the page?

20 And does -- if you read, that says "please describe
21 primary reason for enrollment." Does that then reflect what
22 was sent to you by Kathy Harris? If you can see that, "to be
23 completed by the client"?

24 A. Yes, I see that. But that did not come with the
25 application that Kathy sent.

AUDREY PEAVEY - FURTHER REDIRECT

1 Q. Right. This would have been completed with Sandy
2 Schmeideknecht?

3 A. Correct.

4 MS. SAAD: No further questions, Your Honor.

5 THE COURT: May the witness be excused?

6 MS. SAAD: Yes, Your Honor.

7 THE COURT: Thank you.

8 MS. SAAD: Your Honor, no further witnesses.

9 THE COURT: All right. Thank you all.

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12 PROCEEDINGS CONCLUDED AT 3:57 P.M.

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C E R T I F I C A T E

I, Linda S. Mullen, Registered Diplomate Reporter, Certified Realtime Reporter and Official Reporter of the United States District Court for the Northern District of West Virginia, do hereby certify that the foregoing is a true and correct transcript of the proceedings had in the above-styled action on January 4, 2017, as reported by me in stenotypy.

I certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

Given under my hand this 5th day of September, 2017.

/s/ Linda S. Mullen
Linda S. Mullen, RDR, CRR
Official Reporter, United States
District Court for the Northern
District of West Virginia